

WALKER, *Circuit Judge*, dissenting: New Jersey claims the EPA promulgated an arbitrary and capricious rule. For the reasons explained in the Court’s thoughtful opinion, New Jersey’s argument lacks merit. But rather than reaching the merits, I would, with respect, dismiss New Jersey’s petition for lack of Article III standing.¹ New Jersey has not shown the EPA caused it to “suffer[] an injury in fact . . . that is fairly traceable” to the EPA’s rule.²

* * *

A command by the Clean Air Act requires large-scale emitters of air pollutants to get permits when they make certain changes to their facilities.³ The permit process is triggered by changes that are “major.”⁴ New Jersey argues the EPA should impose stricter record-keeping and reporting requirements on out-of-state polluters who aren’t making changes that are expected to be “major” or have a “reasonable possibility”⁵ of requiring a permit. New Jersey’s theory of standing goes like this:

1. In the future, some out-of-state companies will desire a change that has a “reasonable possibility” of triggering the permit process.
2. Maybe one of those companies would not receive a permit if it applied for one.
3. So maybe that company will avoid triggering the permitting process by underestimating its expected emissions.

¹ U.S. CONST. art. III, § 2.

² *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

³ See 42 U.S.C. § 7475.

⁴ See 40 C.F.R. § 52.21(a)(2)(iii).

⁵ *Id.* § 52.21(r)(6).

4. Maybe the company's change ends up being major.
5. Maybe the EPA will not detect that deception (or unintentional miscalculation) because the company didn't have to keep any records.
6. Maybe the pollution caused by the undetected major change will reach New Jersey.

In other words, pollution *might* reach New Jersey from a company that *might* have hidden a major change's pollution from the EPA, which *might* have denied a permit for the major change that *might* have gone undetected.

For the sake of argument, I will assume that *if* that happens, New Jersey will be injured in two ways. First, its citizens will breathe dirtier air. Second, it will be harder for New Jersey to meet its obligations under the Clean Air Act.⁶

In addition, I will assume that most of steps one through six will happen. For example, with regard to step six, the record shows that about 70% of New Jersey's ozone is made up of air pollutants from other states.⁷ So if sources close to New Jersey make major changes that would not be permitted, and if they avoid detection because of the rule, those illegal emissions will end up harming New Jersey.

However, I cannot assume, and New Jersey has not shown, that the third step above — the EPA's rule will cause injurious underreporting of undetected major changes — is a

⁶ See 42 U.S.C. §§ 7409-7410.

⁷ Davis Decl. at ¶ 14.

“certain[ty],”⁸ a “predictable effect,”⁹ or a “substantial risk.”¹⁰ Even though courts owe states “special solicitude”¹¹ in EPA emissions cases, this solicitude doesn’t cover unknown injuries inflicted by unknown companies at some unknown time in the possibly distant future.¹²

Perhaps New Jersey could have established in the record that the “likely reaction” of sources to the rule will be to underestimate expected emissions to avoid detection.¹³ But that’s not this record. New Jersey has directed us to no evidence in the record showing when, where, or how often out-of-state polluters will make major changes that evade the permitting process in a way that dirties New Jersey’s air.

Instead, New Jersey has provided us with only a couple declarations, about a dozen comments, the rule’s preamble, and the purpose of the rule. But the declarations are long on conclusory statements and data about how much pollution from upwind states reaches New Jersey, and short on how much of

⁸ *Clapper v. Amnesty International USA*, 568 U.S. 398, 410 (2013).

⁹ *Competitive Enterprise Institute v. FCC*, 970 F.3d 372, 381 (D.C. Cir. 2020) (quoting *Department of Commerce v. New York*, 139 S. Ct. 2551, 2566 (2019)).

¹⁰ *Food & Water Watch, Inc., v. Vilsack*, 808 F.3d 905, 914 (D.C. Cir. 2015) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)); cf. *Public Citizen, Inc. v. National Highway Traffic Safety Administration*, 489 F.3d 1279, 1298 (D.C. Cir. 2007) (“[W]ere all purely speculative increased risks deemed injurious, the entire requirement of actual or imminent injury would be rendered moot, because all hypothesized, nonimminent injuries could be dressed up as increased risk of future injury.”) (cleaned up).

¹¹ *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007).

¹² *Clapper*, 568 U.S. at 409 (an “injury must be certainly impending”) (cleaned up); *id.* (a “possible future injury” is “not sufficient”) (cleaned up).

¹³ *Competitive Enterprise Institute*, 970 F.3d at 382.

that pollution comes from major changes that will go undetected absent a stricter rule.¹⁴ Those declarations include no firsthand knowledge or empirical evidence of major changes that will be detected only under a stricter rule.

New Jersey's other sources help it even less. The rule's preamble includes no data relevant to Article III standing. And the relevant comments merely express non-specific, conclusory fears about the rule's enforceability.¹⁵ Again, they don't contain empirical data or firsthand accounts alleging when, where, or whether out-of-state polluters will make major changes that evade the permitting process.

As for the rule's purpose of preventing malfeasance and miscalculations, that's not enough either. Some rules can be prophylactic. Others are senseless. A rule's mere existence does not mean it is actually solving a problem that is injuring anyone.

In contrast, in *Department of Commerce v. New York* — where plaintiffs had standing because a federal policy's predictable effect on third parties would be an increase in the third parties' illegal refusal to submit census forms, thereby injuring the plaintiffs — the district court record was

¹⁴ See Davis Decl. at ¶ 20 (“Sources in upwind states may be emitting air pollutants at levels that would necessitate [a permit]”); see also Wong Decl. at ¶ 6 (“New Jersey is harmed by the possibility of unlawful emissions from sources in states upwind of New Jersey”).

¹⁵ See Comments of the National Association of Clean Air Agencies (May 7, 2007), at 2 (The rule “is likely to result in diminished . . . compliance.”).

voluminous.¹⁶ It included empirical study piled on empirical study predicting with specificity — down to the tenth of a percentage point — how many third parties would injure the plaintiffs as a direct result of the agency’s decision to ask census respondents whether they were citizens.¹⁷ And the district court’s (179-page) opinion made factual findings based on extensive evidence unlike anything in the administrative record here.

I will quote those factual findings at length in order to illustrate their specificity and thoroughness:

191. The Census Bureau’s conclusions are spelled out in three memoranda. First, the Census Bureau’s December 22 Memo summarized evidence that a citizenship question would cause a then-estimated 5.1% decline in self-response rates among noncitizens. *See* December 22 Memo, at AR 11639-40. It noted that “this evidence is consistent with citizenship questions being more sensitive for household with noncitizens,” *id.* at AR 11640, a fact that is not in dispute, *see* PX-297 at RFA 70.

192. Second, the Census Bureau’s January 19 Memo similarly concluded that addition of a citizenship question would reduce self-response rates. *See* January 19 Memo, at AR 1280. The Memo summarized “[t]hree distinct analyses” that “support the conclusion of an adverse impact on self-response” caused by the addition of a citizenship question. *Id.*

¹⁶ 139 S. Ct. 2551; *see New York v. Department of Commerce*, 351 F. Supp. 3d 502, 622-25 (S.D.N.Y.), *affirmed in part, reversed in part*, 139 S. Ct. 2551 (2019).

¹⁷ 351 F. Supp. 3d at 578-81.

First, data show that, on the ACS survey, Hispanic households are disproportionately less likely to respond to the citizenship question, whether responding by mail or online. *Id.* Second, a comparison of self-response rates for the 2000 census's long-form census questionnaire (which included a citizenship question) and its short-form census questionnaire (which did not) revealed that noncitizen households were 3.3% less likely than all-citizen households to respond to the long-form questionnaire. *Id.* A similar comparison of 2010 census self-response rates to 2010 ACS self-response rates (the latter of which included a citizenship question) produced a similar result: Noncitizen households were 5.1% less likely than all-citizen households to respond to the survey containing a citizenship question. *See id.* Based on these comparisons, the Memo noted, it was a "reasonable inference that a question on citizenship would lead to some decline in overall self-response" and "a larger decline in self-response for noncitizen households." *Id.* at AR 1281. Finally, the Memo analyzed the "breakoff rates" (the rate at which a respondent stops responding to the survey when he or she comes to a particular question) on the 2016 ACS internet survey. Those rates indicated that Hispanics were disproportionately likely to "breakoff" in their responses when they came to the citizenship question. *See id.*

193. Third, a comprehensive study by Census Bureau staff published on August 6, 2018 and referred to at trial as the Brown Memo (so named for its lead author) consolidated the existing data on the impact of a citizenship question. The Brown Memo also

concluded that a citizenship question would disproportionately reduce noncitizens' self-response rates. *See* Brown Memo at 1, 54. The Brown Memo presented data illustrating that Hispanics and noncitizens are disproportionately unlikely to respond to a citizenship question. *See id.* at 7-9. The data also showed that those subpopulations became even less likely to respond to a citizenship question during the middle of this decade. *See id.* at 9-10 (“[T]hat sensitivity has increased in recent years.”).

194. Whereas the January 19 Memo had predicted that addition of the citizenship question would cause a 5.1% differential decline in noncitizen household self-response rates, *see* January 19 Memo, at AR 1280, the Brown Memo updated that figure to 5.8% on the basis of more recent data, *see* Brown Memo at 39. Notably, it emphasized that the 5.8% estimate was still “conservative.” *Id.*; *see also* Tr. 900-01. It was conservative, the Memo explained, because the analysis supporting the estimate relied on ACS data, and the effect of a citizenship question on the ACS may have been muted by its presence among the large number of questions. *See* Brown Memo at 39; *see also* Tr. 87, 89, 901-02. A citizenship question on the shorter 2020 census questionnaire “will be more visible” and thus likely to produce a more pronounced effect. Brown Memo at 39. And changes in the macroenvironment since the ACS data was collected, including a higher “level of concern about using citizenship data for enforcement purposes,” could also exacerbate the effects of adding a citizenship question. *Id.*

195. Separate and apart from its effects on self-response rates among noncitizen households, the Brown Memo supports the conclusion that adding a citizenship question to the 2020 census will disproportionately depress self-response rates among Hispanic households (some, but not all, of which are also noncitizen households). The Brown Memo showed that Hispanics were more than twice as likely as non-Hispanic whites to skip the citizenship question on the ACS and that the differential in such item nonresponse rates increased between 2013 and 2016. *Id.* at 8-10. Other ACS questions did not produce the same differential effects. *See id.* And the Memo found that the citizenship-question breakoff rate for Hispanics on the ACS was eight times higher than the breakoff rate for non-Hispanic whites. *See id.* at 10; accord January 19 Memo, at AR 1281.

196. As the Census Bureau has observed, this differential breakoff effect is growing. The breakoff rate among Hispanics for the 2017 ACS citizenship question (which was not available in time to be incorporated into the Brown Memo's analysis) was *twelve* times higher than the breakoff rate for non-Hispanic whites. *See* AR 12757-62; Tr. 916. Moreover, the breakoff rate for Hispanics, but not for non-Hispanic whites, increased between 2016 and 2017 — suggesting that the effects of a citizenship question on Hispanic self-responses have been “increas[ing].” AR 12757-62; Tr. 916-17. The Census Bureau believes that “Hispanics are more sensitive to survey questions about citizenship than they were a few years ago”; non-Hispanic whites “are not.” Census Bureau 30(b)(6) Dep. 366-69.

197. Defendants' expert, Dr. Abowd, credibly testified to the soundness of the Census Bureau's analyses and conclusion that adding a citizenship question to the 2020 census would result in a differential decline in self-response rates among noncitizen households. With regard to methodology, Dr. Abowd testified not only that the Brown Memo was "methodologically appropriate," but also that it "constitutes the best analysis that the Census Bureau can do of the consequences of adding the citizenship question to the 2020 census" given the available data. Tr. 897. With regard to conclusions, Dr. Abowd testified that both he and the Census Bureau agreed that adding a citizenship question to the 2020 census would lead to a lower self-response rate among noncitizen households. *See id.* at 881-82. Finally, Dr. Abowd agreed that "[t]he bulk of the evidence suggests that the citizenship question is likely to be responsible for the decline in self-response," and that 5.8% was a "conservative estimate" of the likely differential decline in self-response rates among noncitizen households if a citizenship question were added to the 2020 census questionnaire. *Id.* at 1352, 900-02.

198. Dr. Abowd testified that considerations beyond those mentioned in the Brown Memo further supported the view that the 5.8% estimate was "conservative." *See id.* at 944. For instance, he referred to the Census Bureau's Census Barriers, Attitudes, and Motivators Survey ("CBAMS"). *See id.*; PX-662. The CBAMS found that, in 2018, only 67% of people said they were likely to respond to the 2020 census, as compared to the 86% who had said in

2008 they were likely to respond to the 2010 census. *See* PX-662, at 12. It noted that “[t]he citizenship question may be a major barrier” in part because people believed that the census’s “purpose is to find undocumented immigrants.” *Id.* at 43. Dr. Abowd testified that the increase in sensitivity to a citizenship question reflected in the CBAMS study “would not be captured in the 5.8 percentage point estimate that is based on data only up through 2016.” Tr. 944-45; *see also id.* at 902, 916-17.

199. Testimony from at least three of Plaintiffs’ expert witnesses bolsters the Census Bureau’s and Dr. Abowd’s conclusions about self-response rates. First, Dr. D. Sunshine Hillygus credibly and reliably testified that “noncitizens and Hispanics are differentially concerned about the confidentiality of a citizenship question” and, thus, “would be less likely to participate” in a survey that includes such a question. *See id.* at 50-51; *see also id.* at 57-58. She noted that this concern has increased in the last few years. *Id.* at 51-53. Notably, Dr. Hillygus testified that a citizenship question would be likely to affect the response rates of all Hispanics, “regardless of their own immigration or citizenship status.” *Id.* at 51-52, 1404; *see also* PX-152; PX-662; PX-663. That testimony is supported by evidence showing that Hispanics who are citizens are disproportionately hesitant to engage with the government by seeking food stamps or health care out of fear that a family member could be deported. *See* Tr. 52-54, 57, 85-86.

200. Second, Dr. Matthew Barreto, “an expert in survey methodology, public opinion polling, and racial and ethnic politics,” credibly testified that “the

addition of a citizenship question . . . in today's macro environment would result in reduced participation in Latino and immigrant communities in 2020." *Id.* at 589, 620-21. He based this conclusion on a review of existing social science literature and on the results of a public opinion survey that he designed and conducted. *See id.* at 620, 643-44. On the basis of that evidence, Dr. Barreto credibly concluded that Hispanic households would be substantially less willing to participate in the census if there were a citizenship question, regardless of whether they were given assurances that their responses would be kept confidential. Tr. 682-85; *see also* PX-670.

201. Third, Dr. Jennifer L. Van Hook's expert analysis of 2017 ACS data demonstrates that nonresponse to the ACS citizenship question has continued to increase among Hispanics relative to other subgroups since 2013. *See* Docket No. 489-3 ("Van Hook Decl."), ¶¶ 69-71. By contrast, there has not been a significant increase in nonresponse rates for the citizenship question for other racial groups. *See id.* ¶ 70. On an absolute basis, nonresponse rates for the citizenship question for Hispanics have also increased since 2013. *See id.* ¶¶ 72-73.¹⁸

If *our* record looked like *that* record, then we could say "the predictable effect of [the EPA's rule] on the decisions of [polluters]" is an increase in illegal pollution significant enough to implicate Article III standing.¹⁹ This is not to say

¹⁸ *Id.*

¹⁹ *Competitive Enterprise Institute*, 970 F.3d at 381 (quoting *Department of Commerce*, 139 S. Ct. at 2566).

standing requires *as much* evidence as in *Department of Commerce v. New York*. But the difference between there and here is the difference between a ton of apples and an ounce of an orange.

For that reason, this case is much more like *Clapper*²⁰ (no standing) than *Massachusetts v. EPA*²¹ (standing). Just as the alleged injury in *Clapper* was “too speculative to satisfy the well-established requirement that threatened injury must be ‘certainly impending,’” New Jersey has not alleged “actual knowledge” that, because of the challenged rule, a particular source upwind has emitted or “certainly” will emit more pollution than the EPA’s emissions standards allow.²² Nor has it demonstrated a “substantial risk” of that pollution.²³ It instead relies on an “attenuated chain of possibilities”²⁴ and “on speculation about the unfettered choices made by independent actors not before the court.”²⁵

In contrast, in *Massachusetts v. EPA*, there was no question about the exact sources of pollution. *All* cars were injuring the state in a specific way (by emitting carbon that reduced the state’s coastline).²⁶ But here, because some large-scale polluters accurately disclose their pollution without stricter monitoring and record-keeping requirements, New Jersey doesn’t know which (if any) out-of-state polluter is injuring it.

²⁰ 568 U.S. at 422.

²¹ 549 U.S. at 525.

²² *Clapper*, 568 U.S. at 401 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)); *id.* at 410-11.

²³ *Food & Water Watch, Inc.*, 808 F.3d at 914.

²⁴ *Clapper*, 568 U.S. at 410.

²⁵ *Id.* at 414 n.5 (cleaned up).

²⁶ 549 U.S. at 521-23.

* * *

New Jersey also claims it's injured by the EPA's lax record-keeping requirements for *in-state* polluters. According to New Jersey, the EPA's rule makes it harder for the state to comply with its permitting obligations under the Clean Air Act.²⁷ And here again, I agree with New Jersey that *if* the EPA's rule makes its task of complying with the Clean Air Act "more difficult and onerous," then it has standing.²⁸

But as with out-of-state polluters, that "if" depends on whether in-state polluters will cheat. And New Jersey's prediction of in-state cheating is no less speculative than its prediction of out-of-state cheating.²⁹

I do not read *West Virginia v. EPA* to alter that analysis. There, the EPA's policy limited the choices available to the petitioner states.³⁰ Absent the EPA's policy, those states would have been free to adopt regulatory regimes more desirable to them than what was possible under the EPA's policy.³¹ Here, in contrast, the EPA's rule does not make New Jersey's compliance with the Clean Air Act any more difficult *unless* we accept New Jersey's speculation about polluters cheating — which brings us back to where we started.³²

To be sure, if New Jersey believes what it says — that the EPA's rule goes too easy on polluters — then New Jersey may well decide down the road to impose additional requirements on in-state polluters. But absent a record containing more

²⁷ See 42 U.S.C. § 7410(a)(2).

²⁸ *West Virginia v. EPA*, 362 F.3d 861, 868 (D.C. Cir. 2004).

²⁹ See *infra* pp. 1-12.

³⁰ 362 F.3d at 868.

³¹ *Id.*

³² See *infra* pp. 1-12.

14

specific evidence than what we have here, New Jersey's decision will be based on the state's best guess about the effect of those additional requirements — the type of speculation that is often enough for legislators, but not enough for courts applying the elements of Article III standing.

* * *

Absent a more robust record, New Jersey's predictions of pollution from illegal major changes traceable to the EPA's monitoring and recordkeeping requirements are "conjectural" and "hypothetical."³³ The record does not show the challenged rule's "predictable effect" will be major changes that cause illegal pollution.³⁴ I respectfully disagree with the Court's conclusion to the contrary.

³³ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

³⁴ *Competitive Enterprise Institute*, 970 F.3d at 381 (quoting *Department of Commerce*, 139 S. Ct. at 2566).

Message

From: Stanich, Ted [Stanich.Ted@epa.gov]
Sent: 3/16/2021 6:56:38 PM
To: Arroyo, Victoria [Arroyo.Victoria@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Freedhoff, Michal [Freedhoff.Michal@epa.gov]; Fox, Radhika [Fox.Radhika@epa.gov]
CC: Utech, Dan [Utech.Dan@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]; Blythers, Dorian [Blythers.Dorian@epa.gov]; Carpenter, Wesley [Carpenter.Wesley@epa.gov]; Fine, Philip [Fine.Philip@epa.gov]; Kudarauskas, Paul [Kudarauskas.Paul@epa.gov]; Rodan, Bruce [rodan.bruce@epa.gov]; Shaw, Betsy [Shaw.Betsy@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Keigwin, Richard [Keigwin.Richard@epa.gov]; Waterhouse, Carlton [Waterhouse.Carlton@epa.gov]; Tyree, Robin [Tyree.Robin@epa.gov]; Nichols, Tonya [Nichols.Tonya@epa.gov]
Subject: Action Requested by COB 3/18: Implementing EO 14017:100-Day Critical Materials Report
Attachments: EO 14017-America's Supply Chains.pdf

Colleagues,

I appreciate your help addressing our first data call implementing *Executive Order (EO) 14017: America's Supply Chains, 2/24/2021* (attached). The National Security Council (NSC)/National Economic Council (NEC) asked all Departments and Agencies to provide a 3-4 page memo outlining existing tools (programs, policy, research, guidance, etc.) to address supply chain risks (including critical minerals and climate change risks) by March 22. This EO requires the Secretary of Defense to submit a report, within 100 days, to the President on risk in the supply chains for strategic and critical materials.

To help us ensure the Agency's priorities and equities are properly represented in the implementation of EO 14017, **by COB Thursday, March 18, please send one paragraph briefly describing materials affecting your program's operations and existing tools to address supply chain risks to Robin Tyree** (tyree.robin@epa.gov). This information should include work performed under the previous EO related to this topic, *EO 13953 Addressing the Threat to Domestic Supply Chain from Reliance on Critical Minerals from Foreign Adversaries and Supporting the Domestic Mining and Processing Industries, 9/20/2020*. While EO 13953 focused on critical minerals, EO 14017 includes a much broader definition of critical materials. Please feel free to contact me with any questions or have your staff contact Robin as needed. I very much appreciate your time and attention to this matter.

Definitions from EO 14017:

"Critical goods and materials" means goods and raw materials currently defined under statute or regulation as "critical" materials, technologies, or infrastructure.

"Critical minerals" has the meaning given to that term in Executive Order 13953 of September 30, 2020 (Addressing the Threat to the Domestic Supply Chain From Reliance on Critical Minerals From Foreign Adversaries and Supporting the Domestic Mining and Processing Industries).

"Other essential goods and materials" means goods and materials that are essential to national and economic security, emergency preparedness, or to advance the policy set forth in section 1 of this order, but not included within the definition of "critical goods and materials."

Please contact Paul Kudarauskas if you have any questions at 202-564-2415.

v/r,
 Ted J. Stanich
 Associate Administrator
 & Federal Senior Intelligence Coordinator
 Office of the Administrator
 Office of Homeland Security
 U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW
Washington, DC 20460
Office: 202-564-5484
Cell: 202- (b) (6)
HSDN: ted.stanich@dhs.sgov.gov
JWICS: t.stanich@epa.id.ic.gov

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, and disposed of in accordance with EPA policy relating to FOUO information, and is not to be released to the public, the media, or other personnel who do not have a valid need-to-know without prior approval of an authorized EPA official. This document is intended to identify and promulgate the strategic direction of the Intelligence Enterprise in order to focus analytic, collection, and reporting activities and efforts; and conveys no authority to engage in law enforcement or intelligence activities.



Presidential Documents

Executive Order 14017 of February 24, 2021

America's Supply Chains

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. The United States needs resilient, diverse, and secure supply chains to ensure our economic prosperity and national security. Pandemics and other biological threats, cyber-attacks, climate shocks and extreme weather events, terrorist attacks, geopolitical and economic competition, and other conditions can reduce critical manufacturing capacity and the availability and integrity of critical goods, products, and services. Resilient American supply chains will revitalize and rebuild domestic manufacturing capacity, maintain America's competitive edge in research and development, and create well-paying jobs. They will also support small businesses, promote prosperity, advance the fight against climate change, and encourage economic growth in communities of color and economically distressed areas.

More resilient supply chains are secure and diverse—facilitating greater domestic production, a range of supply, built-in redundancies, adequate stockpiles, safe and secure digital networks, and a world-class American manufacturing base and workforce. Moreover, close cooperation on resilient supply chains with allies and partners who share our values will foster collective economic and national security and strengthen the capacity to respond to international disasters and emergencies.

Therefore, it is the policy of my Administration to strengthen the resilience of America's supply chains.

Sec. 2. Coordination. The Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Economic Policy (APEP) shall coordinate the executive branch actions necessary to implement this order through the interagency process identified in National Security Memorandum 2 of February 4, 2021 (Renewing the National Security Council System). In implementing this order, the heads of agencies should, as appropriate, consult outside stakeholders—such as those in industry, academia, non-governmental organizations, communities, labor unions, and State, local, and Tribal governments—in order to fulfill the policy identified in section 1 of this order.

Sec. 3. 100-Day Supply Chain Review. (a) To advance the policy described in section 1 of this order, the APNSA and the APEP, in coordination with the heads of appropriate agencies, as defined in section 6(a) of this order, shall complete a review of supply chain risks, as outlined in subsection (b) of this section, within 100 days of the date of this order.

(b) Within 100 days of the date of this order, the specified heads of agencies shall submit the following reports to the President, through the APNSA and the APEP:

(i) The Secretary of Commerce, in consultation with the heads of appropriate agencies, shall submit a report identifying risks in the semiconductor manufacturing and advanced packaging supply chains and policy recommendations to address these risks. The report shall include the items described in section 4(c) of this order.

(ii) The Secretary of Energy, in consultation with the heads of appropriate agencies, shall submit a report identifying risks in the supply chain for

high-capacity batteries, including electric-vehicle batteries, and policy recommendations to address these risks. The report shall include the items described in section 4(c) of this order.

(iii) The Secretary of Defense (as the National Defense Stockpile Manager), in consultation with the heads of appropriate agencies, shall submit a report identifying risks in the supply chain for critical minerals and other identified strategic materials, including rare earth elements (as determined by the Secretary of Defense), and policy recommendations to address these risks. The report shall also describe and update work done pursuant to Executive Order 13953 of September 30, 2020 (Addressing the Threat to the Domestic Supply Chain From Reliance on Critical Minerals From Foreign Adversaries and Supporting the Domestic Mining and Processing Industries). The report shall include the items described in section 4(c) of this order.

(iv) The Secretary of Health and Human Services, in consultation with the heads of appropriate agencies, shall submit a report identifying risks in the supply chain for pharmaceuticals and active pharmaceutical ingredients and policy recommendations to address these risks. The report shall complement the ongoing work to secure the supply chains of critical items needed to combat the COVID-19 pandemic, including personal protective equipment, conducted pursuant to Executive Order 14001 of January 21, 2021 (A Sustainable Public Health Supply Chain). The report shall include the items described in section 4(c) of this order.

(c) The APNSA and the APEP shall review the reports required under subsection (b) of this section and shall submit the reports to the President in an unclassified form, but may include a classified annex.

(d) The APNSA and the APEP shall include a cover memorandum to the set of reports submitted pursuant to this section, summarizing the reports' findings and making any additional overall recommendations for addressing the risks to America's supply chains, including the supply chains for the products identified in subsection (b) of this section.

Sec. 4. Sectoral Supply Chain Assessments. (a) Within 1 year of the date of this order, the specified heads of agencies shall submit the following reports to the President, through the APNSA and the APEP:

(i) The Secretary of Defense, in consultation with the heads of appropriate agencies, shall submit a report on supply chains for the defense industrial base that updates the report provided pursuant to Executive Order 13806 of July 21, 2017 (Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States), and builds on the Annual Industrial Capabilities Report mandated by the Congress pursuant to section 2504 of title 10, United States Code. The report shall identify areas where civilian supply chains are dependent upon competitor nations, as determined by the Secretary of Defense.

(ii) The Secretary of Health and Human Services, in consultation with the heads of appropriate agencies, shall submit a report on supply chains for the public health and biological preparedness industrial base (as determined by the Secretary of Health and Human Services). The report shall complement the work conducted pursuant to section 4 of Executive Order 14001.

(iii) The Secretary of Commerce and the Secretary of Homeland Security, in consultation with the heads of appropriate agencies, shall submit a report on supply chains for critical sectors and subsectors of the information and communications technology (ICT) industrial base (as determined by the Secretary of Commerce and the Secretary of Homeland Security), including the industrial base for the development of ICT software, data, and associated services.

(iv) The Secretary of Energy, in consultation with the heads of appropriate agencies, shall submit a report on supply chains for the energy sector industrial base (as determined by the Secretary of Energy).

(v) The Secretary of Transportation, in consultation with the heads of appropriate agencies, shall submit a report on supply chains for the transportation industrial base (as determined by the Secretary of Transportation).

(vi) The Secretary of Agriculture, in consultation with the heads of appropriate agencies, shall submit a report on supply chains for the production of agricultural commodities and food products.

(b) The APNSA and the APEP shall, as appropriate and in consultation with the heads of appropriate agencies, recommend adjustments to the scope for each industrial base assessment, including digital networks, services, assets, and data ("digital products"), goods, services, and materials that are relevant within more than one defined industrial base, and add new assessments, as appropriate, for goods and materials not included in the above industrial base assessments.

(c) Each report submitted under subsection (a) of this section shall include a review of:

(i) the critical goods and materials, as defined in section 6(b) of this order, underlying the supply chain in question;

(ii) other essential goods and materials, as defined in section 6(d) of this order, underlying the supply chain in question, including digital products;

(iii) the manufacturing or other capabilities necessary to produce the materials identified in subsections (c)(i) and (c)(ii) of this section, including emerging capabilities;

(iv) the defense, intelligence, cyber, homeland security, health, climate, environmental, natural, market, economic, geopolitical, human-rights or forced-labor risks or other contingencies that may disrupt, strain, compromise, or eliminate the supply chain—including risks posed by supply chains' reliance on digital products that may be vulnerable to failures or exploitation, and risks resulting from the elimination of, or failure to develop domestically, the capabilities identified in subsection (c)(iii) of this section—and that are sufficiently likely to arise so as to require reasonable preparation for their occurrence;

(v) the resilience and capacity of American manufacturing supply chains and the industrial and agricultural base—whether civilian or defense—of the United States to support national and economic security, emergency preparedness, and the policy identified in section 1 of this order, in the event any of the contingencies identified in subsection (c)(iv) of this section occurs, including an assessment of:

(A) the manufacturing or other needed capacities of the United States, including the ability to modernize to meet future needs;

(B) gaps in domestic manufacturing capabilities, including nonexistent, extinct, threatened, or single-point-of-failure capabilities;

(C) supply chains with a single point of failure, single or dual suppliers, or limited resilience, especially for subcontractors, as defined by section 44.101 of title 48, Code of Federal Regulations (Federal Acquisition Regulation);

(D) the location of key manufacturing and production assets, with any significant risks identified in subsection (c)(iv) of this section posed by the assets' physical location;

(E) exclusive or dominant supply of critical goods and materials and other essential goods and materials, as identified in subsections (c)(i) and (c)(ii) of this section, by or through nations that are, or are likely to become, unfriendly or unstable;

(F) the availability of substitutes or alternative sources for critical goods and materials and other essential goods and materials, as identified in subsections (c)(i) and (c)(ii) of this section;

(G) current domestic education and manufacturing workforce skills for the relevant sector and identified gaps, opportunities, and potential best practices in meeting the future workforce needs for the relevant sector;

(H) the need for research and development capacity to sustain leadership in the development of critical goods and materials and other essential goods and materials, as identified in subsections (c)(i) and (c)(ii) of this section;

(I) the role of transportation systems in supporting existing supply chains and risks associated with those transportation systems; and

(J) the risks posed by climate change to the availability, production, or transportation of critical goods and materials and other essential goods and materials, as identified in subsections (c)(i) and (c)(ii) of this section.

(vi) allied and partner actions, including whether United States allies and partners have also identified and prioritized the critical goods and materials and other essential goods and materials identified in subsections (c)(i) and (c)(ii) of this section, and possible avenues for international engagement. In assessing these allied and partner actions, the heads of agencies shall consult with the Secretary of State;

(vii) the primary causes of risks for any aspect of the relevant industrial base and supply chains assessed as vulnerable pursuant to subsection (c)(v) of this section;

(viii) a prioritization of the critical goods and materials and other essential goods and materials, including digital products, identified in subsections (c)(i) and (c)(ii) of this section for the purpose of identifying options and policy recommendations. The prioritization shall be based on statutory or regulatory requirements; importance to national security, emergency preparedness, and the policy set forth in section 1 of this order; and the review conducted pursuant to subsection (c)(v) of this section;

(ix) specific policy recommendations for ensuring a resilient supply chain for the sector. Such recommendations may include sustainably reshoring supply chains and developing domestic supplies, cooperating with allies and partners to identify alternative supply chains, building redundancy into domestic supply chains, ensuring and enlarging stockpiles, developing workforce capabilities, enhancing access to financing, expanding research and development to broaden supply chains, addressing risks due to vulnerabilities in digital products relied on by supply chains, addressing risks posed by climate change, and any other recommendations;

(x) any executive, legislative, regulatory, and policy changes and any other actions to strengthen the capabilities identified in subsection (c)(iii) of this section, and to prevent, avoid, or prepare for any of the contingencies identified in subsection (c)(iv) of this section; and

(xi) proposals for improving the Government-wide effort to strengthen supply chains, including proposals for coordinating actions required under this order with ongoing efforts that could be considered duplicative of the work of this order or with existing Government mechanisms that could be used to implement this order in a more effective manner.

(d) The APNSA and the APEP shall review the reports required under subsection (a) of this section and shall submit the reports to the President in an unclassified form, but may include a classified annex.

Sec. 5. General Review and Recommendations. As soon as practicable following the submission of the reports required under section 4 of this order, the APNSA and the APEP, in coordination with the heads of appropriate agencies, shall provide to the President one or more reports reviewing the actions taken over the previous year and making recommendations concerning:

(a) steps to strengthen the resilience of America's supply chains;

(b) reforms needed to make supply chain analyses and actions more effective, including statutory, regulatory, procedural, and institutional design

changes. The report shall include recommendations on whether additional offices, personnel, resources, statistical data, or authorities are needed;

(c) establishment of a quadrennial supply chain review, including processes and timelines regarding ongoing data gathering and supply chain monitoring;

(d) diplomatic, economic, security, trade policy, informational, and other actions that can successfully engage allies and partners to strengthen supply chains jointly or in coordination;

(e) insulating supply chain analyses and actions from conflicts of interest, corruption, or the appearance of impropriety, to ensure integrity and public confidence in supply chain analyses;

(f) reforms to domestic and international trade rules and agreements needed to support supply chain resilience, security, diversity, and strength;

(g) education and workforce reforms needed to strengthen the domestic industrial base;

(h) steps to ensure that the Government's supply chain policy supports small businesses, prevents monopolization, considers climate and other environmental impacts, encourages economic growth in communities of color and economically distressed areas, and ensures geographic dispersal of economic activity across all regions of the United States; and

(i) Federal incentives and any amendments to Federal procurement regulations that may be necessary to attract and retain investments in critical goods and materials and other essential goods and materials, as defined in sections 6(b) and 6(d) of this order, including any new programs that could encourage both domestic and foreign investment in critical goods and materials.

Sec. 6. Definitions. For purposes of this order:

(a) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5). "Agency" also means any component of the Executive Office of the President.

(b) "Critical goods and materials" means goods and raw materials currently defined under statute or regulation as "critical" materials, technologies, or infrastructure.

(c) "Critical minerals" has the meaning given to that term in Executive Order 13953 of September 30, 2020 (Addressing the Threat to the Domestic Supply Chain From Reliance on Critical Minerals From Foreign Adversaries and Supporting the Domestic Mining and Processing Industries).

(d) "Other essential goods and materials" means goods and materials that are essential to national and economic security, emergency preparedness, or to advance the policy set forth in section 1 of this order, but not included within the definition of "critical goods and materials."

(e) "Supply chain," when used with reference to minerals, includes the exploration, mining, concentration, separation, alloying, recycling, and reprocessing of minerals.

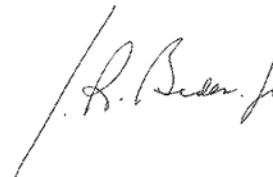
Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
February 24, 2021.

[FR Doc. 2021-04280
Filed 2-26-21; 8:45 am]
Billing code 3295-F1-P

Message

From: Millett, John [Millett.John@epa.gov]
Sent: 2/25/2021 9:51:27 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Nunez, Alejandra [Nunez.Alejandra@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Kim, Eun [Kim.Eun@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]
CC: Lubetsky, Jonathan [Lubetsky.Jonathan@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]; DeLuca, Isabel [DeLuca.Isabel@epa.gov]
Subject: NGA talking points for Casey, for Monday
Attachments: NGA TPs -- Air.docx

Ex. 5 Deliberative Process (DP)

Here's the request from OCIR:

Casey Katims will be speaking at a National Governors Association (NGA) meeting on Monday, March 1, 2021. NGA has asked that he discuss the top "governor-level" major initiatives/issues for the coming year that will significantly impact states. This will be a high-level and relatively brief discussion. We kindly ask that you provide a bullet and a sentence or two for your top few issues that you'd like included in this discussion. Please send us your information by Friday, February 26th at noon.

Ex. 5 Deliberative Process (DP)

Thanks –

John

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Wednesday, February 24, 2021 2:11 PM
To: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Cc: Shoaff, John <Shoaff.John@epa.gov>; Millett, John <Millett.John@epa.gov>
Subject: Fwd: Request for Governor-level National Hot Topics

Suggestions on the best way to go about developing the requested information?

Ann (Campbell) Ferrio
 Chief of Staff
 Office of Air and Radiation
 (202) 566-1370

Begin forwarded message:

From: "Bowles, Jack" <Bowles.Jack@epa.gov>
Date: February 24, 2021 at 1:32:15 PM EST
To: "Barbery, Andrea" <Barbery.Andrea@epa.gov>, "Manges, Ellen" <Manges.Ellen@epa.gov>, "Emmerson, Caroline" <Emmerson.Caroline@epa.gov>, "Tyler, Tom" <Tyler.Tom@epa.gov>, "Tyree, Robin" <Tyree.Robin@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Linkins, Samantha"

<Linkins.Samantha@epa.gov>, "Matthews, Lisa" <Matthews.Lisa@epa.gov>

Cc: "Katims, Casey" <Katims.Casey@epa.gov>, "Fericelli, Paul" <fericelli.paul@epa.gov>

Subject: Request for Governor-level National Hot Topics

Hello National Program Offices,

I hope this email finds you well. Our DAA for Intergovernmental Affairs, Casey Katims will be speaking at a National Governors Association (NGA) meeting on Monday, March 1, 2021. NGA has asked that he discuss the top "governor-level" major initiatives/issues for the coming year that will significantly impact states. This will be a high-level and relatively brief discussion. We kindly ask that you provide a bullet and a sentence or two for your top few issues that you'd like included in this discussion. Please send us your information by Friday, February 26th at noon.

Ex. 5 Deliberative Process (DP)

I would also like to take this opportunity to introduce our new Intergovernmental Liaison Paul Fericelli. He has been with the Agency almost 10 years and bring a wealth of experience in water and land protection programs. Most recently, he supported local governments and other federal agencies achieve environmental stewardship in disaster recovery efforts in the Caribbean. He will be supporting the Agency's engagements with state elected and appointed officials and is available to help you on this request. Paul will be pulling together all the information you submit.

Please contact us if you have questions. And thank you for your assistance.

Take care,

Jack Bowles

Director of State & Local Relations

U.S. Environmental Protection Agency

202-564-3657 (office) | 202-306-5196 (mobile)

Paul Fericelli

Phone: 202.564.3397

Message

From: Nunez, Alejandra [Nunez.Alejandra@epa.gov]
Sent: 2/16/2021 4:47:57 PM
To: Adhar, Radha [Adhar.Radha@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]
CC: Haman, Patricia [Haman.Patricia@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Hengst, Benjamin [Hengst.Benjamin@epa.gov]
Subject: RE: Technical Assistance on the RFS

Hi Radha,
 Thank you so much. I am copying Sarah and Ben, who can advise us on this.
 Ale

From: Adhar, Radha <Adhar.Radha@epa.gov>
Sent: Tuesday, February 16, 2021 10:19 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Cc: Haman, Patricia <Haman.Patricia@epa.gov>
Subject: FW: Technical Assistance on the RFS

Hi Joe and Ale,

Hope you had a wonderful weekend. Wanted to share this TA request Pat received. Can you please advise who is best suited from your team to connect with Senator Carper's office? Laura mentioned Ben Hengst in a separate note last week. We can help schedule.

Thanks in advance,
 Radha

From: Gillam, Laura Haynes (EPW) <Laura_Gillam@epw.senate.gov>
Sent: Friday, February 12, 2021 12:33 PM
To: Haman, Patricia <Haman.Patricia@epa.gov>
Cc: Dotson, Greg (EPW) <Greg_Dotson@epw.senate.gov>; Tulou, Christophe (EPW) <Christophe_Tulou@epw.senate.gov>; Repko, Mary Frances (EPW) <MaryFrances_Repko@epw.senate.gov>; Adhar, Radha <Adhar.Radha@epa.gov>
Subject: Technical Assistance on the RFS

Hi Pat, can we please connect with staff on the RFS in the next week? Thank you.

Laura Haynes Gillam
 Senior Policy Advisor for Clean Air and Climate
 U.S. Senate Environment and Public Works Committee, Democratic Staff
Laura_gillam@epw.senate.gov

Message

From: Nishida, Jane [Nishida.Jane@epa.gov]
Sent: 2/23/2021 9:07:29 PM
To: Utech, Dan [Utech.Dan@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Hamilton, Lindsay [Hamilton.Lindsay@epa.gov]
CC: Arroyo, Victoria [Arroyo.Victoria@epa.gov]
Subject: FW: re-submitting ethylene oxide concerns
Attachments: EO OIG - New EPA Admin Letter - 02-23-2021 (1).pdf

FYI

From: Bakeyah Nelson <bnelson@airalliancehouston.org>
Sent: Tuesday, February 23, 2021 3:52 PM
To: Nishida, Jane <Nishida.Jane@epa.gov>; OIG WEBCOMMENTS <OIG_WEBCOMMENTS@epa.gov>
Cc: corey@airalliancehouston.org; Tejada, Matthew <Tejada.Matthew@epa.gov>
Subject: re-submitting ethylene oxide concerns

Please see our letter attached. Thank you for your attention to this matter.

--



Bakeyah S. Nelson, PhD
Executive Director, Air Alliance Houston
p: 713.528.3779 | e: bnelson@airalliancehouston.org w: <https://airalliancehouston.org> a: 2520
Caroline, Suite 100, Houston, TX 77004



Bakeyah S. Nelson, PhD
Executive Director
Air Alliance Houston
2520 Caroline Street
Suite 100
Houston, Texas 77004

February 23, 2021

Jane Nishida
Acting EPA Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Via Email: nishida.jane@epa.gov

In April 2020, the letter attached was submitted to former Administrator Wheeler. We are re-submitting our letter for your consideration and support the request recently submitted by the EPA Inspector General, Mr. Sean W. O'Donnell, to reconsider former EPA Administrator Andrew Wheeler's decision not to communicate health risks associated with ethylene oxide to communities at-risk. We look forward to your response to this matter.

Respectfully,

Bakeyah Nelson
Executive Director
Air Alliance Houston



Attachment A

Bakeyah S. Nelson, PhD
Executive Director
Air Alliance Houston
2520 Caroline Street
Suite 100
Houston, Texas 77004

April 8, 2020

Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, DC 20460

Dear Administrator Wheeler,

In December of 2016, the US Environmental Protection Agency confirmed the industrial chemical ethylene oxide as a human carcinogen that, with chronic inhalation exposure, may result in an elevated risk of lymphoid and breast cancers. This designation means that the chemical potentially presents a much more significant risk to human health than previously assumed. Later, in the summer of 2018, the EPA released the 2014 National Air Toxics Assessment (2014 NATA) model of the estimated risk of air toxic exposure based on 2014 emission rates, which included the more severe estimated cancer risk of ethylene oxide. The 2014 NATA model identified high risk communities throughout the country that may experience disproportionate and elevated rates of exposure risk from ethylene oxide emissions as a result of their proximity to certain industrial emission sources.

Last week, in the midst of the growing coronavirus pandemic, the EPA's internal watchdog, the Office of Inspector General (OIG), released a report highlighting the seeming reluctance of many regional EPA offices to engage in outreach to notify at-risk communities amid the ongoing chronic environmental health risk from ethylene oxide. The report identified at least 25 facilities throughout the country as the source of emissions that may increase the risk of certain cancers to unacceptable levels in nearby residential communities. These facilities include certain commercial medical sterilization facilities and organic chemical manufacturing plants. Since the identification of these 25 allegedly "high-priority" facilities, however, the EPA and/or state



environmental personnel have met with residents in only nine of the 25 communities that may be potentially impacted by these industries.

The EPA's mission statement includes a commitment to ensure that "all parts of society... have access to accurate information sufficient to effectively participate in managing human health and environmental risks." It is therefore the responsibility of the EPA to coordinate the communication of the risks of ethylene oxide emissions to the communities that have been identified as most at risk.

The EPA's strategy for notifying affected members of the public seems to vary widely according to EPA regional office jurisdiction, and few regional offices seem to have engaged in agency-initiated, proactive outreach to communities. The first public meetings were held by EPA's Region 4 office in Georgia nearly a year after the EPA modeling identified areas of elevated risk, and the meetings were requested by residents rather than initiated by the EPA. Since then, some EPA regional offices, with apparent reluctance, have begun to reach out to the communities in many affected areas and others are planning to do so. However, the EPA Region 6 office - which covers Texas, Louisiana, New Mexico, Oklahoma, and Arkansas - has proposed to let the state environmental agencies take the lead in informing communities about the health risks from ethylene oxide emissions. However, our state agency, the Texas Commission for Environmental Quality (TCEQ) has yet to provide a time frame for this outreach to take place despite the fact that EPA's analysis was released almost two years ago. The proposal for a state-led outreach effort in Texas is a deeply troubling recommendation for an "action plan". The TCEQ, the agency who would presumably lead the effort in our state, has been actively engaged in an effort to discredit the EPA's cancer risk estimates for ethylene oxide. The TCEQ's Toxicology, Risk Assessment, and Research Division, under the directorship of Dr. Michael Honeycutt, has even proposed state-level guidelines that could raise the permissible levels of ethylene oxide emissions for industrial air quality permits.

This is especially troubling because more ethylene oxide emitting facilities are located in Texas than in any other state. According to EPA's 2018 Toxic Release Inventory (TRI), 25 industrial facilities in Texas alone are responsible for emitting around 157 thousand pounds of ethylene oxide emissions in just one year - or about 56.5% of the total ethylene oxide emissions for the United States in 2018. The next highest emitting state is neighboring Louisiana, which accounted for around 20% of national ethylene oxide emissions in 2018.

In addition, Air Alliance Houston's own analysis of the 2014 NATA data has revealed that many at-risk communities with ethylene oxide-attributable cancer risks that significantly exceed the EPA's unacceptable risk rates were not identified in the data provided by EPA to the OIG, and the facilities that are responsible for these emissions - including some of the heaviest emitters - were omitted from the subsequent prioritization list. This oversight, coupled with general agency inaction, means that some of the most at-risk communities - some of which are located in the



Houston area - are unable to actively participate in making informed decisions about their health and safety. Moreover, facilities in Texas are not being held accountable or being required to modify their operations to reduce the identified cancer-risk.

The EPA and state agencies are neglecting their duty to protect and inform these communities through their inaction and must begin coordinating public meetings as soon as is feasible to communicate the potential health hazards to residents and to develop an action plan to reduce these risks. Until those meetings can be scheduled, EPA and their state partners must evaluate the findings of the NATA 2014 model and conduct air monitoring surveillance and analysis as well as public health surveys in areas at the greatest risk for exposure to ethylene oxide. As we have seen in the unfolding coronavirus pandemic, the decisions taken now to protect public health can be measured in lives saved or lost.

As such, our organizations respectfully request additional information about TCEQ's plans to conduct direct outreach efforts to inform residents living near high-priority facilities emitting ethylene oxide in Texas and Louisiana. Given that the EPA does not plan to conduct direct outreach in Region 6 and given that the health of thousands of people in Texas and Louisiana communities is at-risk from ethylene oxide emissions, our organizations would like answers to the following questions:

- 1) Given that EPA Region 6 has indicated that state agencies will take the lead about informing the public, what plans does TCEQ have to inform the public about the increased risk of cancer from ethylene oxide?
- 2) In the absence of state agencies conducting the appropriate outreach, what steps will EPA Region 6 take to ensure communities are notified?
- 3) Has TCEQ investigated why there was a spike in ethylene oxide emissions at the Equistar facility in 2011, and what steps (if any) did the company take to reduce them in subsequent years?
- 4) Moving forward, how will EPA and/or state agencies measure and monitor ethylene oxide emissions in communities impacted in EPA Region 6?
- 5) What actions will the state agencies take to reduce ethylene oxide emissions in the Houston Region?

We welcome the opportunity to speak with you about the actions state agencies and EPA Region 6 will take to address the elevated cancer risks from ethylene oxide emissions in EPA Region 6 communities.



Sincerely,

Bakeyah S. Nelson, PhD
Executive Director
Air Alliance Houston

John Beard
Executive Director
Port Arthur Community Action Network ("PA-CAN")

Robert Bullard, PhD
Director
HBCU Climate Change Consortium

Reverend James Caldwell
Executive Director
Coalition of Community Organizations (COCO)

Neil Carman, PhD
Clean Air Program Director
Sierra Club's Lone Star Chapter

Elena Craft, PhD
Senior Director for Climate and Health
Environmental Defense Fund

Iris Gonzalez
Director
Coalition for Environment, Equity, and Resilience (CEER)

Patricia Gonzalez
Director
Caring for Pasadena Communities

Cruz Hinojosa
Executive Director
Environmental Community Advocates of Galena Park (ECAGP)

Hilton Kelly
Executive Director
Community In-Power & Development Association Inc.



Jordan Macha
Executive Director
Bayou City Waterkeeper

Luke Metzger
Executive Director
Environment Texas

Bridgette Murray
Executive Director
Achieving Community Tasks Successfully (ACTS)

Genna Reed
Lead Science & Policy Analyst, Center for Science and Democracy
Union of Concerned Scientists

Anne Rolfes
Executive Director
Louisiana Bucket Brigade

Eric Schaeffer
Executive Director
Environmental Integrity Project

Robin Schneider
Executive Director
Texas Campaign for the Environment

Adrian Shelly
Executive Director
Public Citizen Texas

Joanie Steinhaus
Executive Director
Turtle Island Restoration Network (TIRN)

Vivian Stockman
Executive Director
OVEC-Ohio Valley Environmental Coalition



Jackie Young
Executive Director
Texas Health and Environment Alliance (THEA)

Cc: Sean O'Donnell, Office of Inspector General
Doug Benevento, Associate Deputy Administrator
Anne Idsal, Principal Deputy Assistant Administrator, Office of Air and Radiation
Larry Weinstock, Office of Air and Radiation
Loan Nguyen, Office of Enforcement and Compliance Assurance
Amanda Huff, Office of Chemical Safety and Pollution Prevention
Kurt Temple, External Civil Rights Compliance
Pamela Janifer, Office of Congressional & Intergovernmental Relations
Ken McQueen, EPA Region 6 Administrator
Gloria Vaughn, EPA Region 6, Environmental Justice
Jon Niermann, Commissioner, Texas Commission for Environmental Quality

Message

From: Campbell, Ann [Campbell.Ann@epa.gov]
Sent: 3/17/2021 11:32:04 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FOR YOUR SIGNATURE: CAA EGU significant contribution rule - motion to vacate and remand, with Declaration for Joe Goffman
Attachments: Goffman decl for SCF_EGU rule_03-10-21.docx

Joe, the attached is ready for your signature on the final page. No changes have been made since you last reviewed the document. This is set to be filed this afternoon.

Thank you,

Ann (Campbell) Ferrio
 Chief of Staff
 EPA/Office of Air and Radiation
 Office: 202 566 1370

From: Hoffman, Howard <hoffman.howard@epa.gov>
Sent: Monday, March 15, 2021 8:42 AM
To: Hutson, Nick <Hutson.Nick@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: FW: CAA EGU significant contribution rule - motion to vacate and remand, with Declaration for Joe Goffman

Looks like this declaration is ready to go – do you have a suggestion about how to get Joe’s signature? I don’t know what equipment he has at home – is it easiest for him to print, sign, and pdf back just the signature page, and someone can create a version of the declaration with that signature page?

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Saturday, March 13, 2021 3:18 PM
To: Garbow, Avi <Garbow.Avi@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>
Subject: RE: CAA EGU significant contribution rule - motion to vacate and remand, with Declaration for Joe Goffman

Hi, Everyone. Thanks, Avi, for reviewing the materials. Not surprisingly considering the authors and reviewers, the motion and declaration are in excellent shape. Thank you.

Joseph Goffman
 Acting Assistant Administrator
 Office of Air and Radiation
 U.S. Environmental Protection Agency

From: Garbow, Avi <Garbow.Avi@epa.gov>
Sent: Friday, March 12, 2021 2:48 PM
To: Payne, James (Jim) <payne.james@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>
Subject: RE: CAA EGU significant contribution rule - motion to vacate and remand, with Declaration for Joe Goffman

Hey folks – I reviewed the materials and this all looks good to me, subject to Joe’s comfort with the approach and his declaration. Enjoy the upcoming weekend and thx for your work on this. Peace,

avi

From: Payne, James (Jim) <payne.james@epa.gov>

Sent: Thursday, March 11, 2021 7:34 PM

To: Garbow, Avi <Garbow.Avi@epa.gov>

Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>

Subject: CAA EGU significant contribution rule - motion to vacate and remand, with Declaration for Joe Goffman

Hi Avi,

Ex. 5 Attorney Client (AC)

Welcome your input. And let me know if you’d like a briefing or discussion, or plan to review?

Including Joe.

Jim

Ex. 5 Personal Privacy (PP) cell

From: Marks, Matthew <Marks.Matthew@epa.gov>

Sent: Wednesday, March 10, 2021 4:28 PM

To: Payne, James (Jim) <payne.james@epa.gov>

Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>

Subject: Re: Declaration for Joe Goffman to accompany motion to vacate the EGU significant contribution rule

Hi Jim,

Just so you know, Melissa, Dimple, and Marianne are all recused from this matter. Please feel free to share with Avi, as we expect Joe may do so too.

Matt

Sent from my iPhone

On Mar 10, 2021, at 2:51 PM, Hoffman, Howard <hoffman.howard@epa.gov> wrote:

Ex. 5 Attorney Client (AC)

Howard J. Hoffman USEPA-OGC-ARLO (202) 564-5582(O) (240)-401-9721(C) Room 7415 WJC-North
Mailing address: Mail Code 7344A, 1200 Pennsylvania Ave. NW Washington, D.C. 20460

The contents of this message may be subject to the attorney-client, work-product, or deliberative process privileges.

<Goffman decl for SCF_EGU rule_03-10-21.docx>

<ENV_DEFENSE-#954862-v4-SCF_EGU_-_vacatur_motion_03-10-21.docx>

<EGU GHG Signific Contrib FRN 01-13-21.pdf>

Message

From: Shaw, Betsy [Shaw.Betsy@epa.gov]
Sent: 1/29/2021 10:48:21 PM
To: Campbell, Ann [Campbell.Ann@epa.gov]
Subject: Fwd: Implementation of President Biden's Executive Orders: Draft list of regulatory actions
Attachments: Rules that OMB will review and are projected to be signed this year.xlsx

FYI

Sent from my iPhone

Begin forwarded message:

From: "Arroyo, Victoria" <Arroyo.Victoria@epa.gov>
Date: January 29, 2021 at 4:36:56 PM CST
To: "Utech, Dan" <Utech.Dan@epa.gov>, Career Deputy Assistant Administrators <Career_Deputy_Assistant_Administrators@epa.gov>, Leadership_Deputy_Regional_Administrators <Leadership_Deputy_Regional_Administrators@epa.gov>, "Nishida, Jane21" <ActAdmJ21Nishida@epa.gov>, "Goffman, Joseph" <Goffman.Joseph@epa.gov>, "Hoffer, Melissa" <Hoffer.Melissa@epa.gov>, "Fox, Radhika" <Fox.Radhika@epa.gov>, "Freedhoff, Michal" <Freedhoff.Michal@epa.gov>, "Cassady, Alison" <Cassady.Alison@epa.gov>, "Blythers, Dorien" <Blythers.Dorien@epa.gov>
Cc: "Fine, Philip" <Fine.Philip@epa.gov>, "Garbow, Avi" <Garbow.Avi@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Hamilton, Lindsay" <Hamilton.Lindsay@epa.gov>
Subject: RE: Implementation of President Biden's Executive Orders: Draft list of regulatory actions

Dear Current and Acting EPA Leadership,

Ex. 5 Deliberative Process (DP)

Thank you all, and hope you are heading into a good weekend.

Best,
Vicki Arroyo
Associate Administrator, Office of Policy

From: Utech, Dan <Utech.Dan@epa.gov>
Sent: Saturday, January 23, 2021 7:08 PM
To: Career Deputy Assistant Administrators <Career_Deputy_Assistant_Administrators@epa.gov>; Leadership_Deputy_Regional_Administrators <Leadership_Deputy_Regional_Administrators@epa.gov>; Nishida, Jane21 <ActAdmJ21Nishida@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Arroyo, Victoria <Arroyo.Victoria@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>; Freedhoff, Michal <Freedhoff.Michal@epa.gov>; Cassidy, Alison <Cassady.Alison@epa.gov>; Blythers, Dorien <Blythers.Dorien@epa.gov>
Subject: Implementation of President Biden's Executive Orders

TO: Current and Acting EPA Leadership
FR: Dan Utech, Chief of Staff
RE: Implementation of President Biden's Executive Orders

This past week, President Biden issued a set of Executive Orders, several of which require EPA to take action with urgent deadlines. Many of you likely have already read and started developing implementation plans for the components of the orders relevant to your programs and offices. To ensure that we stay on pace agencywide to meet our obligations, I ask that each office review the following and develop a plan to meet the urgent and longer-term deadlines.

URGENT DEADLINES

Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis

This EO requires EPA to "review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policy set forth in section 1 of this order. For any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions." **Within 30 days, EPA must submit to the Director of the Office of Management and Budget a preliminary list of any actions being considered that would be completed by December 31, 2021, and that would be subject to OMB review.** With this thirty-day deadline in mind, please note the following milestones:

Internal Deadlines

Ex. 5 Deliberative Process (DP)

To assist in the development of lists of agency actions, the Office of Policy will distribute an initial list during the week of January 25.

Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing

January 27, 2021: Administrator must report on progress of implementation of mask mandate and COVID protocols across EPA campuses.

EXECUTIVE ORDERS AND MEMOS FOR REVIEW

Please review the following and develop a plan for meeting the given deadlines and completing the tasks in your purview. Additional details on process and timelines will follow.

MEMO: Regulatory Freeze Pending Review

MEMO: Modernizing Regulatory Review

Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis

Executive Order on Revocation of Certain Executive Orders Concerning Federal Regulation

Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

Executive Order on Organizing and Mobilizing the United States Government to Provide a Unified and Effective Response to Combat COVID-19 and to Provide United States Leadership on Global Health and Security

Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing

Executive Order on Ensuring an Equitable Pandemic Response and Recovery

Executive Order on Ensuring a Data-Driven Response to COVID-19 and Future High-Consequence Public Health Threats

Executive Order on Ethics Commitments by Executive Branch Personnel

Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

Executive Order on Establishing the COVID-19 Pandemic Testing Board and Ensuring a Sustainable Public Health Workforce for COVID-19 and Other Biological Threats

Executive Order on Protecting the Federal Workforce

Executive Order on Economic Relief Related to the COVID-19 Pandemic

Message

From: Clarke, Victoria [clarke.victoria@epa.gov]
Sent: 2/5/2021 9:39:39 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
CC: Fugh, Justina [Fugh.Justina@epa.gov]
Subject: RE: Sherwin-Williams (SHW)

Hi Joel

As always, it was a delight to speak with you. I wanted to memorialize our conversation and what we discussed — if anything is different than what you remember, let me know!

Ex. 5 Attorney Client (AC)

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Thursday, February 04, 2021 3:28 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Sherwin-Williams (SHW)

How about 3? Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Thursday, February 4, 2021 8:43 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Sherwin-Williams (SHW)

Hi Joel

The entirety of my Friday afternoon is open to chat.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Wednesday, February 03, 2021 11:40 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Sherwin-Williams (SHW)

*should *not* interfere...

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation

U.S. Environmental Protection Agency

From: Goffman, Joseph
Sent: Wednesday, February 3, 2021 11:37 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Sherwin-Williams (SHW)

Ex. 5 Attorney Client (AC)

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Wednesday, February 3, 2021 11:28 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Sherwin-Williams (SHW)

Hi Joe,
I butted in, not because I had any lack of confidence in Victoria but because I was deeply annoyed by another email and desperately needed a distraction. You're in excellent and capable hands with Victoria, and she is working on Friday. I'll leave you two to it.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Wednesday, February 03, 2021 10:58 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: Re: Sherwin-Williams (SHW)

Thanks for the quick response Any chance we can have a meeting Friday afternoon? I think I need a refresher. Thanks, again.

Sent from my iPhone

On Feb 3, 2021, at 10:39 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Joe,

Ex. 5 Attorney Client (AC)

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308
North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004
for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Goffman, Joseph <Goffman.Joseph@epa.gov>

Sent: Wednesday, February 03, 2021 9:24 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>

Subject: Sherwin-Williams (SHW)

Hi. **Ex. 5 Attorney Client (AC)**

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

Message

From: Arroyo, Victoria [Arroyo.Victoria@epa.gov]
Sent: 2/17/2021 2:24:46 PM
To: Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Freedhoff, Michal [Freedhoff.Michal@epa.gov]; Waterhouse, Carlton [Waterhouse.Carlton@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Fox, Radhika [Fox.Radhika@epa.gov]; Frey, Christopher [Frey.Christopher@epa.gov]
CC: Garbow, Avi [Garbow.Avi@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]; Torma, Tim [Torma.Tim@epa.gov]; Fine, Philip [Fine.Philip@epa.gov]; Hamilton, Lindsay [Hamilton.Lindsay@epa.gov]
Subject: FW: For review — draft list of actions responsive to EO 13990 that is due to OMB Friday Feb 19
Attachments: EO 13990 data call due Feb 19.xlsx

Flag: Follow up

Ex. 5 Deliberative Process (DP)

Can folks please take a look today and let me and Bill (copied here) know asap if you think a quick meeting is needed? Otherwise, we'll assume if we do not hear from your office by mid-day tomorrow (by 1 pm), we can proceed as laid out above and finalize the report to OMB accordingly. Thank you!

Best,
Vicki

Vicki Arroyo
Associate Administrator, Office of Policy
(202) 657-9243

From: Nickerson, William <Nickerson.William@epa.gov>
Sent: Tuesday, February 16, 2021 6:00 PM
To: Arroyo, Victoria <Arroyo.Victoria@epa.gov>
Cc: Cassady, Alison <Cassady.Alison@epa.gov>; Fine, Philip <Fine.Philip@epa.gov>; Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Torma, Tim <Torma.Tim@epa.gov>; Manibusan, Mary <Manibusan.Mary@epa.gov>; Kramer, Melissa <Kramer.Melissa@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Subject: For review — draft list of actions responsive to EO 13990 that is due to OMB Friday Feb 19

Vicki (and taking the liberty to directly copy Alison),

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Please let me know if you have any questions or would like additional information. Thank you.

Bill

Message

From: Bowles, Jack [Bowles.Jack@epa.gov]
Sent: 3/2/2021 6:20:05 PM
Subject: State & Local Weekly for March 2, 2021

State & Local Weekly

March 2, 2021

CURRENT and UPCOMING

• Upcoming Conferences and Events

- Chesapeake Bay Principals Steering Committee, March 2, 2021
- National League of Cities Virtual Congressional City Conference, March 7-10, 2021
- Environmental Council of States Spring Virtual Meeting, March 16-17, 2021
- National Association of Counties Virtual Legislative Conference, March 8-26, 2021

- Meeting with Bloomington-Normal (IL) Economic Development Council

On Wednesday, March 3, the Office of Water will join OIR and Region V in a meeting with the Bloomington-Normal Economic Development Council (BNEDC) to discuss the region's efforts to upgrade its water reclamation facility and groundwater treatment. The Council is part of the One Voice Group – a pro-community campaign that brings together leaders from the City of Bloomington, the Town of Normal, McLean County, labor, local educational institutions and local private businesses. The Annual BNEDC One Voice DC fly-in is virtual this year with briefings for the Congressional delegation and key Federal Agencies from the One Voice delegation and agency personnel. The local city/town/county representatives always appreciate time with EPA during this annual event. They are looking forward to discussing their proposed water projects. *(Contact: M. Arnita Hannon Christmon)*

~ NACo Legislative Virtual Conference 2021

The National Association of Counties' (NACo) 2021 Legislative Virtual Conference, which will take place via several separate on-line sessions between March 8 and March 26, will feature two OCIR presenters on Tuesday, March 9. Deputy Associate Administrator for Intergovernmental Relations Casey Katims will address members of NACo's Environment, Energy and Land Use (EELU) Steering Committee during their business session, providing general remarks on administration priorities. Following this, EPA Municipal Ombudsman Jamie Piziali will re-introduce to the Committee her recently-established, statutorily-created position within OCIR and provide an overview of the charge and range of activities/assistance with which local government officials can avail themselves, including – but not limited to – integrated planning. The EELU Steering Committee is comprised of approximately 100 members and is chaired by Commissioner Melissa Cribbins of Coos County, Oregon. *(Contact: Andrew Hanson)*

NLC Congressional City Conference

The National League of Cities will convene its annual Congressional City Conference virtually March 7-10. Over 2,000 NLC members, comprising Mayors, City and Town Council members, and other elected and appointed local officials, are usually in Washington, DC for this conference. Among others, White House Office of Domestic Climate Policy Director, and former EPA Administrator Gina McCarthy, US Department of

Transportation Secretary, and former South Bend, IN Mayor Pete Buttigieg, and House Speaker Nancy Pelosi will address the conference in General Sessions. Councilmember Kathy Maness (Lexington, SC), President, will preside. Mayors Vince Williams (Union City, GA) and Victoria Woodards (Tacoma, WA) serve as 1st Vice President and 2nd Vice President, respectively.

The Energy, Environment and Natural Resources Committee (EENR) will meet on Sunday, March 7 to discuss advocacy and policy priorities for the year. These priorities will focus mostly on water infrastructure and climate change. Councilmember Ellen Smith (Oak Ridge, TN), EENR Chair, will preside. Councilmembers Cindy Dyballa (Tacoma Park, MD), and Adrian Hernandez (Pearland, TX), are Vice Chairs. Casey Katims, Deputy Associate Administrator for Intergovernmental Relations (OCIR), Jamie Piziali, Municipal Ombudsman, and Radhika Fox, Acting Assistant Administrator for Water, per invitation, will engage with the committee. Radhika is requested to bring remarks on EPA's Water Infrastructure priorities.

On Monday, March 8, Madison, WI Mayor Satya Rhodes-Conway and Alan Roberson, Association of State Drinking Water Administrators, will address a Workshop on the Lead and Copper Rule: What Cities Need to Know. Mayor Rhodes-Conway has met with EPA headquarters in the past to discuss her city's priority water-related issues. She is the founder (2019) of the Sustainability Leaders Collaborative with a mission of bringing together elected officials, administrators, and staff who work on sustainability issues from nearly two dozen cities, villages, and towns in Dane County, WI. The mayor also has prioritized preparedness and resilience at the regional level.

On Tuesday, March 9, Vicki Arroyo, AA for Policy, Office of Policy, will address a Workshop on Climate Change: From City Leadership to Federal Action. She is asked to discuss the Administration's Climate Change priorities. Mayors Lauren McLean (Boise, ID), and Errick D. Simmons (Greenville, MS) will join the panel. House Energy and Commerce Committee staff have also been invited to participate in the workshop. Jason Hartke, Ph.D., International WELL Building Institute, will serve as Moderator. NLC describes the scope of this workshop with the following narrative: Across the country, cities and local leaders have been forging ahead on climate action and making bold commitments that put their communities at the vanguard in addressing this global crisis. Meanwhile, federal action has been at a standstill. Now, with a new administration and Congress, climate change is back as a top federal priority. In this session, [local leaders] will hear from top agency and congressional representatives on the latest plans and priorities for addressing climate change. In addition, local leaders will share their innovative solutions to this urgent issue and explore how the federal government can be a stronger partner in advancing solutions.

Also on Tuesday, March 9, EPA representatives from the Office of Water and the Office of Brownfields and Land Redevelopment (OBLR) will participate in the Federal Agency Round Robin. Office of Water staff will engage with local leaders on Wastewater and Green Infrastructure Programs. OBLR staff, represented by Daniel Moher, Sahar Rana, and Aimee Storm, will focus on Brownfields Redevelopment and engage in dialogue on successes and any barriers that communities might be facing to full participation in the Brownfields program. With the virtual setting there will be format changes for this session. However, the session will still provide the usual interactive forum that offers federal agencies the opportunity to share federal resources, tools, grants and programs of interest to local governments and local officials as conference attendees switch between breakout rooms in timed rotations. For each room, the federal agency representatives will be able to post resources/documents for all attendees and engage in live discussion. OIR is managing EPA's participation in the conference (*Contact: M. Arnita Hannon Christmon*)

Mayors Water Council March Meetings

The Mayors Water Council, a Task Force under the US Conference of Mayors, plans to host two meetings in March -dates tbd. Mayors David Berger (Lima, OH), and Jill Techel (Napa, CA), serve as Council Co-Chairs. For the first meeting, EPA's Office of Water staff will be invited to speak to the mayors on both Municipal Water Infrastructure, and the WIFIA Program. To date, Jorianne Jernberg, WIFIA Program Director, has confirmed her availability to participate. Michael Deane, Chief, Clean Water SRF Program (Office of Water, Office of Wastewater Management), has been invited to engage with the mayors and is reviewing the request. The second meeting will provide a forum for Office of Water staff to discuss Integrated Planning Permits. The scope of this portion is being developed. OIR is working with Chris Kloss, Director, Water Permits Division (OW), and his team as they determine representation. OIR will continue to coordinate with the Office of Water on the requests for presenters and manage EPA's participation in the meetings. *(Contact: M. Arnita Hannon Christmon)*

Municipal Ombudsman Clean Water Act Corner

Meetings:

- March 2 – EPA's CWA Integrated Planning Roundtable for State NPDES Permit Writers
- March 7 – NLC – Energy, Environment and Natural Resources Committee
- March 9 – NACo - Environment, Energy and Land Use Steering Committee
- March 17-18 – ACWA Mid-Year Meeting

Resources:

- [\[EXTERNAL\] 2021 Climate Justice for All Project Grants RFP](#) from the Climate Reality Project for climate leaders, community organizers, faith groups, and other organizations working in a community. Applications due **March 21, 2021**.
- EPA's NEW [Innovative Water Infrastructure Workforce Development Grant Program](#) applications due **March 26, 2021**
- DOI's BOR's [WaterSmart Grant Programs](#), upcoming deadlines in April 2021 for Water Marketing Strategy Funding Opportunity and Applied Science Grants.
- [Wastewater Technology Clearinghouse](#) - helping communities make informed choices about innovative, alternative, and reuse wastewater technologies
- Enhanced [Clearinghouse for Environmental Finance](#) – expanded resources from air and land programs added to OW's Water Finance Clearinghouse platform
- [Technical Assistance for CWA Integrated Planning available until August 2021](#): For state NPDES permitting authorities reviewing a CWA [integrated plan](#) or municipalities in the process of alternatives analysis. [See flyer for more details](#)

Webcasts:

- March 3, 1-2 PM ET: EPA's [Community-Based Water Resilience Case Study](#)
- March 11, 2-3 PM ET: EPA's [WaterSense: Benefits of Soil Moisture Sensors](#)
- March 17, 12-1 PM ET: [Introducing EPA's Benchmarking & Building Performance Standards Policy Toolkit](#)
- April 1, 12-1:30pm ET: EPA's [Creating the Water Workforce of the Future – Cultivating a Positive Workforce Culture From Apprenticeship to Career](#)

(Contact: Jamie Piziali, [Municipal Ombudsman](#))

Other Events, Meetings, & Interactions with State & Local Officials

- On March 9, ORD's Bruce Rodan will present at the State Environmental Health Directors (SEHDs) convening, hosted by the Association of State and Territorial Health Officials (ASTHO). The theme of the meeting is environmental health priorities and opportunities under the new presidential administration.

Topics of interest to the SEHD peer group members include climate & health, COVID-19 & environmental health, and bolstering the Environmental Health workforce, as well as traditional environmental health issues such as PFAS, childhood lead poisoning, risk communication and more. The federal panel also includes CDC (Pat Breyse, Director NCEH/ATSDR) and FDA (Alan Tart, Deputy Director of the Office of Partnerships) who will provide agency updates. ASTHO's environmental health team will lead a discussion and conduct polling with the SEHDs on topics related to COVID-19 response efforts, and ways ASTHO can further support the peer group. This convening is part of a series that will be held in lieu of the SEHD Annual Meeting.

- The Environmental Council of the States (ECOS) Spring Meeting is taking place virtually on March 16-17. The theme of the meeting is *Navigating Change*. ECOS member agencies are successfully navigating change through strategic alliances; creative use of technology; and the sharing of policies and best practices in air, water, land, compliance, PFAS and other emerging contaminants, pandemic adaptation, environmental equity and more. The meeting will showcase many of these initiatives while marking the start of cooperative work with new EPA and congressional leaders. ORD will be participating in two sessions: Complex Challenges – Tackling PFAS, Harmful Algal Blooms, & 1,4-Dioxane (Jennifer Orme-Zavaleta) and Advances in Air & Water Monitoring – Augmenting Data while Conserving Resources (Tim Watkins).
- At the ECOS Spring Meeting, EPA/ORD plans to announce the extension of the formal Memorandum of Agreement between EPA, ECOS and ASTHO (the national association of state and territorial chief health officials) for the next five years, reaffirming our commitment to work together protecting public health from environmental threats and hazards and advancing health and environmental equity for all citizens. It reinforces our shared commitment to an enduring partnership that is helping us navigate the unprecedented challenges the states and the nation have faced over the past year, federal transition, and the new, complex environmental challenges that are sure to emerge in the near future.

LOCAL GOVERNMENT ADVISORY COMMITTEE and SMALL COMMUNITIES ADVISORY SUBCOMMITTEE

The 2021 solicitation process for new members and reappointments to LGAC and SCAS will begin soon, with an announcement expected to publish in the Federal Register in the next week or two. EPA leadership is encouraged to send suggestions or recommendations for local/tribal/territorial leaders at this time, so that we can ensure they are notified of the application process once it begins. Please send name, title and email address for any recommendations to Paige Lieberman (Lieberman.Paige@epa.gov).

In 2021 members of the LGAC and SCAS will be asked to provide advice and recommendations on a broad range of issues, which may include: advancing environmental justice; ensuring access to clean air and water; reducing greenhouse gas emissions; bolstering resilience to the impacts of climate change; and limiting exposure to dangerous chemicals and pesticides.

To be considered for 2021 appointments, nominations should be submitted by April 16, 2021. Candidates must be current elected or appointed officials representing local, state, tribal or territorial governments. EPA expressly values diversity, equity, and inclusion, and encourages the nominations of individuals from diverse backgrounds, so that the LGAC and SCAS look like America and reflect the country's rich diversity.

More information on the LGAC is available here: <https://www.epa.gov/ocir/local-government-advisory-committee-lgac>.

RECAP

EPA Briefs NGA and Governors' Federal Affairs Directors

On Monday, March 1 EPA's DAA for Intergovernmental Relations, Casey Katims gave remarks to the periodic meeting of federal affairs directors organized by the National Governors Association. DAA Katims provided an overview of Administration initiatives and EPA national program priorities.

USCM Winter Leadership Meeting

The US Conference of Mayors hosted its Annual Winter Leadership Meeting virtually on February 18 and 19. The current leadership, Mayor Greg Fischer (Louisville, KY), President, Mayor Nan Whaley (Dayton, OH), Vice President, and Mayor Francis X. Suarez (Miami, FL), Second Vice President, presided as Policy Committees leadership and Board members conduct business. Administrator-designate Regan was invited to speak to the mayors on his priorities. He was unable to join the mayors as he awaits confirmation, but looks forward to future such opportunities for meaningful engagement with the mayors. *(Contact: M. Arnita Hannon Christmon)*

EPA Briefs the U.S. Climate Alliance on the HFC Provisions of the AIM Act of 2020

Staff from OAR and OCIR participated in the monthly meeting of the U.S Climate Alliance's HFC's workgroup to discuss plans for implementing the HFC phasedown provisions of the AIM Act of 2020. The AIM Act, which was included in the Consolidated Appropriations Act, 2021, directs EPA to phase down production and consumption of HFCs in the United States by 85 percent over the next 15 years. It sets the stage for the United States' ambitious agenda to lead domestically and serve as an example abroad to tackle potent climate pollutants such as HFCs. A global HFC phasedown is expected to avoid up to 0.5° Celsius of global warming by 2100.

With a final rulemaking deadline of 270 days from the 12/27/20 enactment date, EPA will embark on an ambitious rulemaking effort that will include extensive engagement with stakeholder and government partners.

Jack Bowles

Director of State & Local Relations
U.S. Environmental Protection Agency
202-564-3657 (office) | 202-306-5196 (mobile)

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 3/18/2021 6:36:57 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Subject: Biomass

Ex. 5 Attorney Client (AC)

M

Melissa A. Hoffer
Acting General Counsel
Principal Deputy General Counsel
U.S. Environmental Protection Agency
Office of General Counsel
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202.440.1671
E: hoffer.melissa@@epa.gov

Message

From: Bowles, Jack [Bowles.Jack@epa.gov]
Sent: 3/9/2021 6:31:40 PM
Subject: State & Local Government Weekly for March 9, 2021

State & Local Weekly

March 9, 2021

CURRENT and UPCOMING

Upcoming Conferences and Events

- National League of Cities Virtual Congressional City Conference, March 7-10, 2021
- National Association of Counties Virtual Legislative Conference, March 8-26, 2021
- Environmental Council of States Spring Virtual Meeting, March 16-17, 2021
- Association of Clean Water Administrators, March 17-18, 2021
- U.S. Conference of Mayors Water Council, April 15, 2021

NACo Legislative Virtual Conference 2021

The National Association of Counties' (NACo) 2021 Legislative Virtual Conference, which will take place via several separate on-line sessions between March 8 and March 26, will feature two OCIR presenters on Tuesday, March 9. Deputy Associate Administrator for Intergovernmental Relations Casey Katims will address members of NACo's Environment, Energy and Land Use (EELU) Steering Committee during their business session, providing general remarks on administration priorities. Following this, EPA Municipal Ombudsman Jamie Piziali will re-introduce to the Committee her recently-established, statutorily-created position within OCIR and provide an overview of the charge and range of activities/assistance with which local government officials can avail themselves, including – but not limited to – integrated planning. The EELU Steering Committee is comprised of approximately 100 members and is chaired by Commissioner Melissa Cribbins of Coos County, Oregon. *(Contact: Andrew Hanson)*

NLC Congressional City Conference

The National League of Cities began its annual Congressional City Conference virtually on Sunday, March 7, and the conference concludes on March 10. Over 2,000 NLC members, comprising Mayors, City and Town Council members, and other elected and appointed local officials, are usually in Washington, DC for this conference. About 1500 are participating in this year's sessions. Among others, White House Office of Domestic Climate Policy Director, and former EPA Administrator Gina McCarthy, US Department of Transportation Secretary, and former South Bend, IN Mayor Pete Buttigieg, and House Speaker Nancy Pelosi will address the conference in General Sessions. Councilmember Kathy Maness (Lexington, SC), President, will preside. Mayors Vince Williams (Union City, GA) and Victoria Woodards (Tacoma, WA) serve as 1st Vice President and 2nd Vice President, respectively.

The Energy, Environment and Natural Resources Committee (EENR) met on Sunday, March 7 to discuss advocacy and policy priorities for the year. These priorities will focus mostly on water infrastructure and climate change, and will be reflected in Resolutions and National Municipal Policy (NMP) updates that will be considered during the next full NLC membership convening that is scheduled for July 14-16, either virtually, or in a host

city. Councilmember Ellen Smith (Oak Ridge, TN), EENR Chair, presided. Councilmembers Cindy Dyballa (Tacoma Park, MD), and Adrian Hernandez (Pearland, TX), are Vice Chairs.

Casey Katims, Deputy Associate Administrator for Intergovernmental Relations (OCIR), Jamie Piziali, Municipal Ombudsman, and Radhika Fox, Acting Assistant Administrator for Water, per invitation, engaged with the committee during a portion set aside for EPA. They were received enthusiastically and the Committee members expressed strong support for the priorities they shared and for doing all they can collectively under NLC, and in their individual Communities to ensure effective partnerships with EPA and the Administration. Casey emphasized EPA's continued commitment to strong partnerships with communities, and reiterated the Administration's deep commitment to supporting NLC's efforts, particularly in the areas of Climate Change, Environmental Justice, Adequate Investment in Water Infrastructure, and, Access to Clean Air and Water with continuing focus on Affordability, among other priorities. Casey also noted the release on Friday, March 5 of the LGAC/SCAS Solicitation for Nominations. Jamie discussed her role as EPA's first Municipal Ombudsman and highlighted her availability to communities as a resource to cities, towns, and villages of all sizes and demographics seek to meet Clean Water Act obligations.

Radhika discussed EPA's Water Policy-related priorities by covering an array of programs to support local communities, including WIFIA and the SRFs that help to finance critical water infrastructure projects. She noted that WOTUS, LCR, Recycling/Plastics, and TSCA regulations are also on OW's list of priorities. Radhika also touched on the importance of the continued Affordability/Financial Capability Assessment Guidance, and Water Workforce Development, including Training and related grant opportunities to support the building and continuity of "human infrastructure." She spoke to EPA's commitment to strong federal partnerships with municipalities and how additional appropriations in measures like the Covid Relief package will help in this area. She also moved to the Water sector's key role in Climate Adaptation, including the role of utilities in contributing to GHG reductions, and the critical need to invest in the resiliency of water systems, among other impactful steps that can be taken. Radhika noted that the Administration is supporting the involvement of all Federal Government Agencies in addressing Climate Change. She also responded to questions and engaged in dialogue about such areas as the PFAS Action Plan and other PFAS actions related to Drinking Water standards for two classes of PFAS. She noted that this Administration wants to see a multi-media approach to PFAS that will expand to include other Program Offices beyond OW and OCSPP. Radhika emphasized that a more proactive and integrated approach to addressing PFAS will be a priority.

The Committee heard from DOE Intergovernmental and External Affairs representatives during the Climate Change portion of the meeting. They struck a tone similar to EPA's in reiterating the Administration's commitment to strong federal/local partnerships, and to supporting job creation, and communities that may have been left behind. In addition to discussing efforts to address the failure of the nation's infrastructure to keep pace with today's catastrophic weather events, the DOE officials also informed about a number of resources, including the Clean Energy Demonstration Project.

NLC staff provided Federal Policy Advocacy updates, and the continuing priorities under NLC's Sustainability and City Solutions Center. The Center has provided leadership and community resiliency assistance to some 33 cities, towns, and villages over the past few years. There is a planned announcement of 8 additional cities ahead of Gina McCarthy's Remarks on Tuesday, March 9.

On Monday, March 8, Madison, WI Mayor Satya Rhodes-Conway and Alan Roberson, Association of State Drinking Water Administrators, addressed a Workshop on the Lead and Copper Rule: What Cities Need to Know. Mayor Rhodes-Conway has met with EPA headquarters in the past to discuss her city's priority water-related issues. She is the founder (2019) of the Sustainability Leaders Collaborative with a mission of bringing

together elected officials, administrators, and staff who work on sustainability issues from nearly two dozen cities, villages, and towns in Dane County, WI. The mayor also has prioritized preparedness and resilience at the regional level.

On Tuesday, March 9, Vicki Arroyo, AA for Policy, Office of Policy, will address a Workshop on Climate Change: From City Leadership to Federal Action. She is asked to discuss the Administration's Climate Change priorities. Mayors Lauren McLean (Boise, ID), and Errick D. Simmons (Greenville, MS) will join the panel. House Energy and Commerce Committee staff have also been invited to participate in the workshop. Jason Hartke, Ph.D., International WELL Building Institute, will serve as Moderator. NLC describes the scope of this workshop with the following narrative: Across the country, cities and local leaders have been forging ahead on climate action and making bold commitments that put their communities at the vanguard in addressing this global crisis. Meanwhile, federal action has been at a standstill. Now, with a new administration and Congress, climate change is back as a top federal priority. In this session, [local leaders] will hear from top agency and congressional representatives on the latest plans and priorities for addressing climate change. In addition, local leaders will share their innovative solutions to this urgent issue and explore how the federal government can be a stronger partner in advancing solutions.

Also on Tuesday, March 9, EPA representatives from the Office of Water and the Office of Brownfields and Land Redevelopment (OBLR) will participate in the Federal Agency Round Robin. Office of Water staff will engage with local leaders on Wastewater and Green Infrastructure Programs. OBLR staff, represented by Daniel Moher, Sahar Rana, and Aimee Storm, will focus on Brownfields Redevelopment and engage in dialogue on successes and any barriers that communities might be facing to full participation in the Brownfields program. With the virtual setting there will be format changes for this session. However, the session will still provide the usual interactive forum that offers federal agencies the opportunity to share federal resources, tools, grants and programs of interest to local governments and local officials as conference attendees switch between breakout rooms in timed rotations. For each room, the federal agency representatives will be able to post resources/documents for all attendees and engage in live discussion. OIR is managing EPA's participation in the conference (*Contact: M. Arnita Hannon Christmon*)

Meeting with Olean, New York

On Wednesday, March 10, OIR will join OLEM and Region II staff in a meeting with Olean Mayor Bill Aiello to discuss the city's Renewable Energy Project and how this project can be used to help other municipalities as they make progress on these types of projects that are located on Brownfields or landfill sites. BQ Energy has led the city's project, and enjoys a productive working relationship with Olean, and with the EPA Re-powering America Team. BQ Energy facilitated the engagement of Mayor Aiello with OLEM staff. OLEM staff is producing a write-up of the Olean Re-powering site and its benefits to the community. (*Contact: M. Arnita Hannon Christmon*)

Mayors Water Council Upcoming Meeting

The Mayors Water Council, a Task Force under the US Conference of Mayors, has revised its March meeting plans to host a convening on April 15 entitled, "Municipal Utility Infrastructure Financing: Challenges and Solutions." Mayors David Berger (Lima, OH), and Jill Techel (Napa, CA), serve as Council Co-Chairs. EPA's Office of Water staff will be invited to speak to the mayors on Financing Municipal Water Infrastructure, including the Clean Water SRF, WIFIA, resources that have been identified by the Water Infrastructure and Resiliency Finance Center. OIR will continue to coordinate with the Office of Water on the requests for presenters and manage EPA's participation in the meeting. (*Contact: M. Arnita Hannon Christmon*)

Municipal Ombudsman Clean Water Act Corner

Meetings:

- March 9 – NACo - Environment, Energy and Land Use Steering Committee
- March 17-18 – ACWA Mid-Year Meeting
- March 22 – Integrated Planning Peer-to-Peer Exchange for Municipalities

Resources:

- [External] 2021 Climate Justice for All Project Grants RFP from the Climate Reality Project for climate leaders, community organizers, faith groups, and other organizations working in a community. Applications due **March 21**.

- EPA's NEW Innovative Water Infrastructure Workforce Development Grant Program applications due **March 26, 2021**.

- NFWF's National Coastal Resilience Fund FY21 – pre-proposals due **April 7, 2021**.

- EPA's Environmental Justice Small Grants Program applications due by **May 7, 2021**.

- EPA's Environmental Justice Collaborative Problem-Solving Grants applications due by **May 7, 2021**.

- DOI's BOR's WaterSmart Grant Programs, upcoming deadlines in **April 2021** for Water Marketing Strategy Funding Opportunity and Applied Science Grants.

- Wastewater Technology Clearinghouse - helping communities make informed choices about innovative, alternative, and reuse wastewater technologies

- Enhanced Clearinghouse for Environmental Finance – expanded resources from air and land programs added to OW's Water Finance Clearinghouse platform

- Technical Assistance for CWA Integrated Planning available until **August 2021**: For state NPDES permitting authorities reviewing a CWA integrated plan or municipalities in the process of alternatives analysis. See flyer for more details

Webcasts:

- March 11, 2-3 PM ET: EPA's WaterSense: Benefits of Soil Moisture Sensors

- March 17, 12-1 PM ET: Introducing EPA's Benchmarking & Building Performance Standards

Policy Toolkit

- March 25, 1-2:30 PM ET: Get Flexible - Low Cost Compliance Solutions for Small Wastewater Treatment Systems

- April 1, 12-1:30pm ET: EPA's Creating the Water Workforce of the Future – Cultivating a Positive Workforce Culture From Apprenticeship to Career

(Contact: Jamie Piziali, Municipal Ombudsman)

Other Events, Meetings, & Interactions with State & Local Officials

- On March 9, ORD's Bruce Rodan will present at the State Environmental Health Directors (SEHDs) convening, hosted by the Association of State and Territorial Health Officials (ASTHO). The theme of the meeting is environmental health priorities and opportunities under the new presidential administration. Topics of interest to the SEHD peer group members include climate & health, COVID-19 & environmental health, and bolstering the Environmental Health workforce, as well as traditional environmental health issues such as PFAS, childhood lead poisoning, risk communication and more. The federal panel also includes CDC (Pat Breyse, Director NCEH/ATSDR) and FDA (Alan Tart, Deputy Director of the Office of Partnerships) who will provide agency updates. ASTHO's environmental health team will lead a discussion and conduct polling with the SEHDs on topics related to COVID-19 response efforts, and ways ASTHO can further support the peer group. This convening is part of a series that will be held in lieu of the SEHD Annual Meeting.

- The Environmental Council of the States (ECOS) Spring Meeting is taking place virtually on March 16-17. The theme of the meeting is *Navigating Change*. ECOS member agencies are successfully navigating change through strategic alliances; creative use of technology; and the sharing of policies and best practices in air, water, land, compliance, PFAS and other emerging contaminants, pandemic adaptation, environmental equity and more. The meeting will showcase many of these initiatives while marking the start of cooperative work with new EPA and congressional leaders. ORD will be participating in two sessions: Complex Challenges – Tackling PFAS, Harmful Algal Blooms, & 1,4-Dioxane (Jennifer Orme-Zavaleta) and Advances in Air & Water Monitoring – Augmenting Data while Conserving Resources (Tim Watkins).
- At the ECOS Spring Meeting, EPA/ORD plans to announce the extension of the formal Memorandum of Agreement between EPA, ECOS and ASTHO (the national association of state and territorial chief health officials) for the next five years, reaffirming our commitment to work together protecting public health from environmental threats and hazards and advancing health and environmental equity for all citizens. It reinforces our shared commitment to an enduring partnership that is helping us navigate the unprecedented challenges the states and the nation have faced over the past year, federal transition, and the new, complex environmental challenges that are sure to emerge in the near future.

LOCAL GOVERNMENT ADVISORY COMMITTEE and SMALL COMMUNITIES ADVISORY SUBCOMMITTEE

The 2021 solicitation process for new members and reappointments to LGAC and SCAS will begin soon, with an announcement expected to publish in the Federal Register in the next week or two. EPA leadership is encouraged to send suggestions or recommendations for local/tribal/territorial leaders at this time, so that we can ensure they are notified of the application process once it begins. Please send name, title and email address for any recommendations to Paige Lieberman (Lieberman.Paige@epa.gov).

In 2021 members of the LGAC and SCAS will be asked to provide advice and recommendations on a broad range of issues, which may include: advancing environmental justice; ensuring access to clean air and water; reducing greenhouse gas emissions; bolstering resilience to the impacts of climate change; and limiting exposure to dangerous chemicals and pesticides.

To be considered for 2021 appointments, nominations should be submitted by April 16, 2021. Candidates must be current elected or appointed officials representing local, state, tribal or territorial governments. EPA expressly values diversity, equity, and inclusion, and encourages the nominations of individuals from diverse backgrounds, so that the LGAC and SCAS look like America and reflect the country's rich diversity.

More information on the LGAC is available here: <https://www.epa.gov/ocir/local-government-advisory-committee-lgac>.

RECAP

EPA Briefs NGA and Governors' Federal Affairs Directors

On Monday, March 1 EPA's DAA for Intergovernmental Relations, Casey Katims gave remarks to the periodic meeting of federal affairs directors organized by the National Governors Association. DAA Katims provided an overview of Administration initiatives and EPA national program priorities.

Meeting with Bloomington-Normal (IL) Economic Development Council

On Wednesday, March 3, the Office of Water joined OIR and Region V in a meeting with the Bloomington-Normal Economic Development Council (BNEDC) to discuss the region's efforts to upgrade its water reclamation facility and groundwater treatment. The Council has successfully used Clean Water SRF support in the past. The representatives welcomed the extensive dialogue and guidance on federal and state programs and partnerships, including WIFIA and others, that they might explore to support their proposed water infrastructure and treatment projects. They applauded the array of expertise assembled and look forward to continued partnerships and collaboration with EPA.

The Council is part of the One Voice Group – a pro-community campaign that brings together leaders from the City of Bloomington, the Town of Normal, McLean County, labor, local educational institutions and local private businesses. The Annual BNEDC One Voice DC fly-in was virtual this year with briefings for the Congressional delegation and key Federal Agencies from the One Voice delegation and agency personnel. The local city/town/county representatives always appreciate time with EPA during this annual event. *(Contact: M. Arnita Hannon Christmon)*

Jack Bowles

Director of State & Local Relations
U.S. Environmental Protection Agency
202-564-3657 (office) | 202-306-5196 (mobile)

Message

From: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Sent: 3/8/2021 12:50:13 AM
To: Kasman, Mark [Kasman.Mark@epa.gov]
CC: Shoaff, John [Shoaff.John@epa.gov]; Almodovar, Lisa [Almodovar.Lisa@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Re: Mexico Climate & Energy Sync

+ Joe

Hi Mark, thanks for your note - I'd be happy to join the call. Can you please send the call-in and any other relevant background?

Best,

Tomás

Sent from my iPhone

> On Mar 7, 2021, at 5:48 PM, Kasman, Mark <Kasman.Mark@epa.gov> wrote:
>
> Tomas,
>
> NSC is hosting an unclassified small group call this Tuesday from 1:00-1:45 to sync on climate and energy issues with Mexico. Would you or someone else from OAR like to attend? This is in addition to a classified general IPC that Jane or I will attend on Mexico later in the week.
>
> Mark
>
> Sent from my iPhone

Message

From: Nishida, Jane [Nishida.Jane@epa.gov]
Sent: 2/11/2021 5:31:27 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Newton, Cheryl [Newton.Cheryl@epa.gov]
CC: Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]; Cassidy, Alison [Cassady.Alison@epa.gov]
Subject: FW: Ohio's Response to Petition for Reconsideration; 85 Fed. Reg. 73,636 (Nov. 19, 2020) EPA-R05-OAR-2020-055; FRL-10016-32-Region 5
Attachments: 2021.02.11 FINAL Response to Sierra Club Pet for Reconsid. with Motion to Intervene ATTACHED.PDF

FYI

From: Emily Tapocsi <Emily.Tapocsi@ohioattorneygeneral.gov>
Sent: Thursday, February 11, 2021 12:16 PM
To: Nishida, Jane <Nishida.Jane@epa.gov>; Rineheart, Rachel <Rineheart.Rachel@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: Ohio's Response to Petition for Reconsideration; 85 Fed. Reg. 73,636 (Nov. 19, 2020) EPA-R05-OAR-2020-055; FRL-10016-32-Region 5

Dear Acting Administrator Nishida:

Please see attached the State of Ohio's response to the Petition for Reconsideration of Final Rule entitled *Air Plan Approval; Ohio; Technical Amendment*, 85 Fed. Reg. 73,636 (Nov. 19, 2020) EPA-R05-OAR-2020-055; FRL-10016-32-Region 5. The same is being sent via first-class mail.

If you have any questions or concerns, please do not hesitate to contact me.

Many thanks,



Emily Simmons Tapocsi
 Section Chief – Environmental Enforcement
 Office of Ohio Attorney General Dave Yost
 Office number: 614-466-2766
Emily.Tapocsi@OhioAttorneyGeneral.gov



der of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by telephone.

** Please note that, in adherence to best practices brought about in response to COVID-19, the Ohio Attorney General's Environmental Enforcement Section moved to a "remote work" status effective March 18, 2020. All members of the section remain available remotely during normal business hours. Thank you for your patience.*

Message

From: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Sent: 3/18/2021 6:35:38 PM
To: Grundler, Christopher [grundler.christopher@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]
CC: Gunning, Paul [Gunning.Paul@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Kocchi, Suzanne [Kocchi.Suzanne@epa.gov]
Subject: FW: SPEC Call

Hi all, here is a readout of the call that just came in from Jane – looks like it happened earlier today. I will ask Mark to give us a heads up if another discussion is planned. Best,

Tomás

From: Nishida, Jane <Nishida.Jane@epa.gov>
Sent: Thursday, March 18, 2021 2:29 PM
To: Utech, Dan <Utech.Dan@epa.gov>; Lucey, John <Lucey.John.D@epa.gov>
Cc: Cassady, Alison <Cassady.Alison@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Kasman, Mark <Kasman.Mark@epa.gov>; Lance, Kathleen <Lance.Kathleen@epa.gov>
Subject: SPEC Call

Here is a summary of today's call with Administrator Regan and Special Presidential Envoy on Climate (SPEC) John Kerry:

Ex. 5 Deliberative Process (DP)

No follow up or next steps were discussed. Please feel free to add or correct for those who were not on the call.

Message

From: Utech, Dan [Utech.Dan@epa.gov]
Sent: 2/2/2021 3:47:44 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: resume
Attachments: Ex. 6 Personal Privacy (PP) Resume (Jan 2021).docx.pdf

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 2/24/2021 4:51:40 PM
To: Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Serassio, Helen [Serassio.Helen@epa.gov]
Subject: RE: CH4 CRA

Ex. 5 Attorney Client (AC)

++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Wednesday, February 24, 2021 11:44 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Serassio, Helen <Serassio.Helen@epa.gov>
Subject: CH4 CRA
Importance: High

Gautam / Matt / Andy,

Ex. 5 Attorney Client (AC)

Working with the memo we previously prepared (attached for convenience), and the research we did, can you please pull together a short briefing paper to inform our discussion.

Ex. 5 Attorney Client (AC)

We should probably aim to have this by early next week.

I welcome any additional thoughts from Joe and Tomas.

Thanks,
Melissa

Message

From: Nunez, Alejandra [Nunez.Alejandra@epa.gov]
Sent: 3/17/2021 10:13:28 PM
To: Shoaff, John [Shoaff.John@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Kim, Eun [Kim.Eun@epa.gov]
CC: Campbell, Ann [Campbell.Ann@epa.gov]
Subject: RE: Reg Agenda submissions - OAR comments

Thank you, John, for your patience!

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ale

From: Shoaff, John <Shoaff.John@epa.gov>
Sent: Wednesday, March 17, 2021 6:10 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>; Kim, Eun <Kim.Eun@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: Reg Agenda submissions - OAR comments

Joe et al,

Ex. 5 Deliberative Process (DP)

John

JOHN SHOAFF (HE/HIM/HIS) | DIRECTOR
 OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
 OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-C
 1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.John@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

From: Shoaff, John
Sent: Wednesday, March 17, 2021 12:12 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>; Ann Campbell <Campbell.Ann@epa.gov>
Subject: RE: Reg Agenda submissions - OAR comments

Tomas et al,

ed)

ed)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

JOHN SHOAFF (HE/HIM/HIS) | DIRECTOR
 OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
 OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-C
 1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.John@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Wednesday, March 17, 2021 11:28 AM
To: Shoaff, John <Shoaff.John@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: Reg Agenda submissions - OAR comments

Hi John, thanks for managing this process – just wanted to offer a couple of comments (and would welcome thoughts/pushback from Peter, Mike or Joe):

Ex. 5 Deliberative Process (DP)

Best,

Tomás

From: Shoaff, John <Shoaff.John@epa.gov>
Sent: Tuesday, March 16, 2021 5:57 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>; Chang, Alice <Chang.Alice@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Henning, Julie <henning.julie@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Mroz, Jessica <mroz.jessica@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Kocchi, Suzanne <Kocchi.Suzanne@epa.gov>; Lau, Patrick <Lau.Patrick@epa.gov>; Edwards, Jonathan <Edwards.Jonathan@epa.gov>; Cherepy, Andrea <Cherepy.Andrea@epa.gov>; Lee, Raymond <Lee.Raymond@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>; Kim, Eun <Kim.Eun@epa.gov>

Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Farrar, Wanda <farrar.wanda@epa.gov>; Whitehurst, Shanika <whitehurst.shanika@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>

Subject: FW: Reg Agenda submissions - OAR comments

Importance: High

Dear all,

OP recently shared the need for feedback on **OA management comments on several reg agenda items**, see table and comment column further below. Ideal if we could get recommended response, e.g., retain/keep original, amend per comment and including whatever suggested change might be **by 11:00 AM tomorrow (Wed AM)** so we can compile for IO review. **OP would like by noon**. Due to tight timeframe, am sharing with IO concurrently to the extent it assists for awareness and any guidance.

Ex. 5 Deliberative Process (DP)

With recommended changes, we'll work with program reg contacts to ensure ADP entries are updated accordingly.

Thanks.

John

Email from Caryn M., OP @ 12:44 PM 3/16:

Ex. 5 Deliberative Process (DP)

JOHN SHOAF (HE/HIM/HIS) | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-C
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA

Shoaff.John@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

From: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>

Sent: Tuesday, March 16, 2021 2:15 PM

To: Campbell, Ann <Campbell.Ann@epa.gov>; Farrar, Wanda <farrar.wanda@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>

Cc: Manibusan, Mary <Manibusan.Mary@epa.gov>

Subject: Reg Agenda submissions - OAR comments

Importance: High

Additional AO management comments on OAR's agenda submission (before sending to OMB). Can you provide edits (email is best, followed by direct ADP Tracker updates) or confirmation of info these entries? See below.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Muellerleile, Caryn

Sent: Tuesday, March 16, 2021 12:44 PM

To: Campbell, Ann <Campbell.Ann@epa.gov>; Farrar, Wanda <farrar.wanda@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; Hofmann, Angela <Hofmann.Angela@epa.gov>; Trombley, Michael <Trombley.Michael@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Bartlett, Keith <Bartlett.Keith@epa.gov>; Peterj Smith <Smith.Peterj@epa.gov> <Smith.Peterj@epa.gov>

Cc: Manibusan, Mary <manibusan.mary@epa.gov>

Subject: Reg Agenda submissions vs. EO 13990 list(s)

Importance: High

Hello all,

We're seeking info on the actions listed immediately below that we did not detect in your Spring 2021 Reg Agenda submission. Can you confirm these omissions or provide an estimated date for tiering of the new action in question?

These questions are coming from EPA senior leadership, so please let us know as soon as you can. See below.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Caryn Muellerleile
Regulatory Management Division
Office of Policy
US Environmental Protection Agency
1200 Pennsylvania Ave NW (1803A)
Washington, DC 20460
(202) 564-2855
muellerleile.caryn@epa.gov

From: Manibusan, Mary <Manibusan.Mary@epa.gov>
Sent: Wednesday, March 03, 2021 12:33 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Farrar, Wanda <farrar.wanda@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; Hofmann, Angela <Hofmann.Angela@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Banks, Dawn <Banks.Dawn@epa.gov>; Lavoie, Emma <Lavoie.Emma@epa.gov>; Trombley, Michael <Trombley.Michael@epa.gov>
Cc: Sughrue, Karen <Sughrue.Karen@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Subject: Unwinding Regulations: final list submitted to OMB today

OAR, OCSPP, OLEM, ORD, and OW RSC Representatives,

Ex. 5 Deliberative Process (DP)

Thank you again!

Mary

Mary Manibusan, Director
Regulatory Management Division (RMD)
(202) 754-1986

RMD Mission Statement: Provides Effective Centralized Management of Regulatory Actions to Ensure Public Health and Environmental Protection.

If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 3/15/2021 11:16:12 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Re: Administrator briefing - CRA disapproval_methane_BCA_final.docx

Yes, this email was me forwarding to you what I had sent to her.

Sent from my iPhone

On Mar 15, 2021, at 5:06 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Thanks. Presumably Kathleen got this?

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Monday, March 15, 2021 5:05 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: FW: Administrator briefing - CRA disapproval_methane_BCA_final.docx

From: Hoffer, Melissa
Sent: Monday, March 15, 2021 5:00 PM
To: Lance, Kathleen <Lance.Kathleen@epa.gov>
Subject: Administrator briefing - CRA disapproval_methane_BCA_final.docx

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 2/25/2021 9:06:27 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Subject: Fwd: Advanced Energy Stimulus, Air Pollution's Health Costs, Grid Reliability, and More

New AGI study re EPA underestimating healthcare costs associated with air pollution.

Sent from my iPhone

Begin forwarded message:

From: Analysis Group <news@analysisgroup.com>
Date: February 25, 2021 at 2:15:11 PM EST
To: "Hoffer, Melissa" <hoffer.melissa@epa.gov>
Subject: Advanced Energy Stimulus, Air Pollution's Health Costs, Grid Reliability, and More

[View message in browser](#)



ENERGY & ENVIRONMENT PRACTICE

EXPERTS & CONSULTANTS

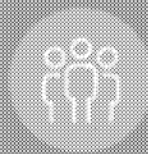
CASES

Winter 2021 | An Analysis Group Update

Energy & Environment Insights



174B



1.5M

Impact of Advanced Energy Stimulus Investment

In a series of independent reports, Principal **Paul Hibbard** and Vice President **Pavel Darling** reviewed how investing stimulus funds in advanced energy technology could revitalize struggling, post-pandemic state economies.

[Read More](#)

Air Pollution's Impact on Health Care Costs

A tool the EPA uses in air quality regulations may be underestimating air pollution-related health care costs by 40%, according to a study led by Senior Advisor **Howard Birnbaum**.

[Read More](#)



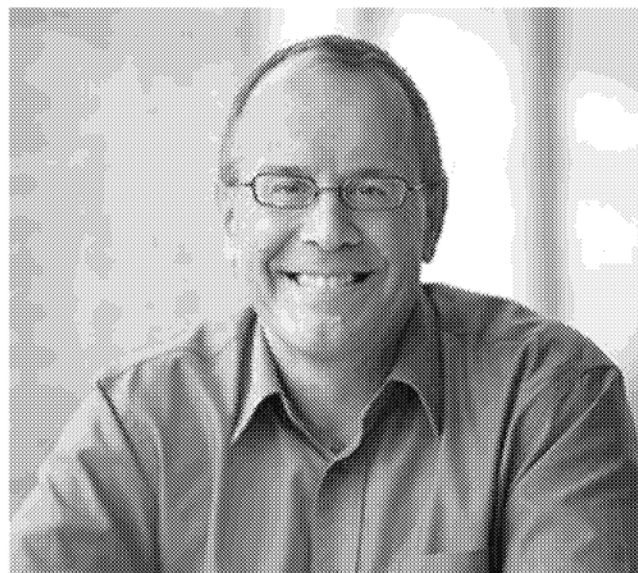
New York Climate Change and Power System Reliability

A team led by Principal **Paul Hibbard** and Manager **Charles Wu** wrote a report on the impacts of climate change and system changes on New York State's power grid reliability as the state pursues 100% GHG reduction by 2040.

[Read More](#)

Limited Storage for Decarbonizing New England

In *The Electricity Journal*, Vice President **Joseph Cavicchi** coauthored an article on the limits of intermittent resources and battery storage as New England decarbonizes with increased electrification.

[Read More](#)

[Learn More About Analysis Group's Energy & Environment Practice](#)

Forward to a colleague

This email was sent to hoffer.melissa@epa.gov

To manage your email preferences or to unsubscribe from all communications, please [click here](#).

Analysis Group
111 Huntington Avenue, Boston, MA 02199 United States
617 425 8000 | news@analysisgroup.com

BOSTON CHICAGO DALLAS DENVER LOS ANGELES MENLO PARK NEW YORK
SAN FRANCISCO WASHINGTON, DC • BEIJING • BRUSSELS • LONDON • MONTREAL • PARIS

Message

From: Shaw, Betsy [Shaw.Betsy@epa.gov]
Sent: 3/18/2021 6:18:24 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Nunez, Alejandra [Nunez.Alejandra@epa.gov]
CC: Hyde, Courtney [Hyde.Courtney@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]
Subject: ARP Monitoring Proposal and Ideas
Attachments: American Rescue Plan - Proposal for \$50M Ambient Air Monitoring 3-18-21 Draft.docx; OAR ARP EJ Ideas Draft 3-18-21.docx

Importance: High

Hi Joe, Tomas and Ale,

Ex. 5 Deliberative Process (DP)

We stand ready to support next steps at your direction.

Thanks,

Betsy

From: "Tejada, Matthew" <Tejada.Matthew@epa.gov>
Date: March 17, 2021 at 6:53:13 PM EDT
To: EJ Coordinators <EJ_Coordinators@epa.gov>, EJ Program Managers <EJ_Program_Managers@epa.gov>
Subject: ARP EJ \$50M

EJ Team,

Ex. 5 Deliberative Process (DP)

ARP EJ passage:

SEC. 3301. FUNDING FOR POLLUTION AND DISPARATE IMPACTS OF THE COVID-19 PANDEMIC.

(a) In General.—In addition to amounts otherwise available, there is appropriated to the Environmental Protection Agency for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$100,000,000, to remain available until expended, to address health outcome disparities from pollution and the COVID-19 pandemic, of which—

(1) \$50,000,000, shall be for grants, contracts, and other agency activities that identify and address disproportionate environmental or public health harms and risks in minority populations or low-income populations under—

(A) section 103(b) of the Clean Air Act (42 U.S.C. 7403(b));

(B) section 1442 of the Safe Drinking Water Act (42 U.S.C. 300j-1);

(C) section 104(k)(7)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)(7)(A)); and

(D) sections 791 through 797 of the Energy Policy Act of 2005 (42 U.S.C. 16131 through 16137); and

(2) \$50,000,000 shall be for grants and activities authorized under subsections (a) through (c) of section 103 of the Clean Air Act (42 U.S.C. 7403) and grants and activities authorized under section 105 of such Act (42 U.S.C. 7405).

(b) Administration of Funds.—

(1) Of the funds made available pursuant to subsection (a)(1), the Administrator shall reserve 2 percent for administrative costs necessary to carry out activities funded pursuant to such subsection.

(2) Of the funds made available pursuant to subsection (a)(2), the Administrator shall reserve 5 percent for activities funded pursuant to such subsection other than grants.

Best,
M

Matthew Tejada
Director - Office of Environmental Justice
Environmental Protection Agency
202-360-6867 (cell)
202-564-8047 (ofc)

Pronouns: he, him, his

For up-to-date information, subscribe to EPA's Environmental Justice listserv by sending a blank email to: join-epa-ej@lists.epa.gov

Message

From: Cassady, Alison [Cassady.Alison@epa.gov]
Sent: 2/3/2021 7:31:53 PM
To: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]
Subject: Re: Approps language: Options

I'm at Secretary Regan's hearing, so I'll recuse myself from an afternoon call. Good luck!

Alison L. Cassady
(202) 941-6036

On Feb 3, 2021, at 2:28 PM, Hoffer, Melissa <hoffer.melissa@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

M

Sent from my iPhone

Begin forwarded message:

From: "Holden, Allison" <Holden.Allison@epa.gov>
Date: February 3, 2021 at 2:17:39 PM EST
To: "Hoffer, Melissa" <hoffer.melissa@epa.gov>
Cc: "Simons, Andrew" <Simons.Andrew@epa.gov>, "Talty, Mark" <Talty.Mark@epa.gov>, "Sisson, Ann" <Sisson.Ann@epa.gov>, "Askew, Wendel" <Askew.Wendel@epa.gov>, "Versace, Paul" <Versace.Paul@epa.gov>, "Goerke, Ariadne" <Goerke.Ariadne@epa.gov>, "Talbert-Duarte, Angelia" <talbert-duarte.angelia@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>
Subject: RE: Approps language: Options

Melissa,

Below is TA from CRFLO and CCILO.

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Allison Holden
Attorney-Advisor

Civil Rights and Finance Law Office
Office of General Counsel
Environmental Protection Agency
202-564-3841

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Wednesday, February 3, 2021 10:49 AM
To: Holden, Allison <Holden.Allison@epa.gov>
Cc: Simons, Andrew <Simons.Andrew@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>; Sisson, Ann <Sisson.Ann@epa.gov>; Askew, Wendel <Askew.Wendel@epa.gov>
Subject: Re: Approps language: Options

We would like to get back to WH today.

Sent from my iPhone

On Feb 3, 2021, at 10:47 AM, Holden, Allison <Holden.Allison@epa.gov> wrote:

Thanks Melissa, I'm adding CRFLO leadership. I do have significant concerns about execution of this language. **What is our deadline for providing TA?** CRFLO people, I will send a meeting invite.

Allison Holden
Attorney-Advisor
Civil Rights and Finance Law Office
Office of General Counsel
Environmental Protection Agency
202-564-3841

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Wednesday, February 3, 2021 10:44 AM
To: Holden, Allison <Holden.Allison@epa.gov>
Cc: Simons, Andrew <Simons.Andrew@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: FW: Approps language: Options

Allison, flagging for you the new language under discussion (our proposed changes in red) to see if you have any concerns. Andy will be reaching out shortly with some more background.

Thanks,
Melissa

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Wednesday, February 3, 2021 10:11 AM

To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Goffman, Joseph
<Goffman.Joseph@epa.gov>
Cc: Utech, Dan <Utech.Dan@epa.gov>; Adhar, Radha
<Adhar.Radha@epa.gov>
Subject: Approps language: Options

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Alison L. Cassady
Deputy Chief of Staff for Policy
U.S. Environmental Protection Agency
Cell: (202) 941-6036

Message

From: Shoaff, John [Shoaff.John@epa.gov]
Sent: 2/22/2021 5:05:30 PM
To: Grundler, Christopher [grundler.christopher@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Edwards, Jonathan [Edwards.Jonathan@epa.gov]
CC: Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Nunez, Alejandra [Nunez.Alejandra@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: Follow-Up on Draft U.S. - Canada Climate Dialogue Deliverable

All,

For collective awareness with other ongoing discussions. Suspect we'll see or learn more soon assuming Biden-Trudeau mtg occurs tomorrow. Best,

John

JOHN SHOAFF | DIRECTOR
 OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
 OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-C
 1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.John@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

From: Kasman, Mark <Kasman.Mark@epa.gov>
Sent: Friday, February 19, 2021 5:40 PM
To: Shoaff, John <Shoaff.John@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: Follow-Up on Draft U.S. - Canada Climate Dialogue Deliverable

John,

Ex. 5 Deliberative Process (DP)

NSC remains open to any thoughts we might have as plans gel.

Mark

From: Shoaff, John <Shoaff.John@epa.gov>
Sent: Friday, February 19, 2021 4:30 PM
To: Kasman, Mark <Kasman.Mark@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Biden-Trudeau Proposed U.S. - Canada Dialogue on Climate

Mark,

Thanks for sharing the paper on the proposed Climate Dialogue with Canada.

Ex. 5 Deliberative Process (DP)

Thanks and have a nice weekend!

John

JOHN SHOAFF | DIRECTOR

OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)

OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-C

1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA

Shoaff.john@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

Message

From: Harvey, Reid [Harvey.Reid@epa.gov]
Sent: 3/15/2021 11:10:13 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Kocchi, Suzanne [Kocchi.Suzanne@epa.gov]
Subject: FW: SIGNED revised CSAPR Update rule
Attachments: Final Rule_Revised Cross State Air Pollution Rule Update for the 2008 Ozone NAAQS_Admin.docx

Importance: High

Done! We will share this with OGC so they and DOJ can notify the court of this. And we will post the pre-publication version of the rule and detailed factsheets soon at: <https://www.epa.gov/csapr/revised-cross-state-air-pollution-rule-update>.

Reid

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Monday, March 15, 2021 7:03 PM
To: Millett, John <Millett.John@epa.gov>
Cc: Conger, Nick <Conger.Nick@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; LaCount, Melanie <LaCount.Melanie@epa.gov>; Lifland, David <Lifland.David@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Hollerbach, Kevin <hollerbach.kevin@epa.gov>
Subject: SIGNED CSPAR timing
Importance: High

Hi everyone,

Please see the attached digitally signed rule. OP will be sending this to OAR for FR processing as well.

Thanks,

Angela

From: Millett, John <Millett.John@epa.gov>
Sent: Monday, March 15, 2021 6:34 PM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Cc: Conger, Nick <Conger.Nick@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; LaCount, Melanie <LaCount.Melanie@epa.gov>; Lifland, David <Lifland.David@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Hollerbach, Kevin <hollerbach.kevin@epa.gov>
Subject: RE: Any word on CSPAR timing?

Awesome – looping Melanie, Ann, David and Kevin to coordinate on posting/press release timing.

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Monday, March 15, 2021 6:30 PM
To: Millett, John <Millett.John@epa.gov>
Cc: Conger, Nick <Conger.Nick@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>; Grantham, Nancy

<Grantham.Nancy@epa.gov>

Subject: Re: Any word on CSPAR timing?

I just sent it to the COS for the Administrator's signature.

I will let you know when I get signed copy back.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs
U.S. Environmental Protection Agency
Office: 202.566.2977
Cell: 202.763.3945

On Mar 15, 2021, at 6:28 PM, Millett, John <Millett.John@epa.gov> wrote:

The package has been with OP for a little while now – just fyi . . .

OAR will post the rule no matter when before midnight, but is there a cut-off time at which we issue the release early tomorrow?

From: Hackel, Angela <Hackel.Angela@epa.gov>

Sent: Monday, March 15, 2021 5:33 PM

To: Conger, Nick <Conger.Nick@epa.gov>; Millett, John <Millett.John@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: RE: Any word on CSPAR timing?

Yes, I have spoken with COS Utech and he is ready to move it to the Admin. for signature when he gets it from me.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of Public Affairs
Office of the Administrator
U.S. EPA
202.566.2977 (office)
202.763.3945 (cell)

From: Conger, Nick <Conger.Nick@epa.gov>
Sent: Monday, March 15, 2021 5:31 PM
To: Millett, John <Millett.John@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>
Cc: Hackel, Angela <Hackel.Angela@epa.gov>
Subject: RE: Any word on CSPAR timing?

Ok adding Angela – are you set to get his signature even if its in a couple hours?

Nick Conger
Press Secretary
Environmental Protection Agency
202-941-1116 (mobile)

From: Millett, John <Millett.John@epa.gov>
Sent: Monday, March 15, 2021 5:29 PM
To: Conger, Nick <Conger.Nick@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>
Subject: RE: Any word on CSPAR timing?

I'm guessing two hours from signature, more or less? Just my guess. It's cleared OMB, with OAR currently, on it's way to OP next. Once it's with OP, Angela Hackel becomes the signature shepherd.

From: Conger, Nick <Conger.Nick@epa.gov>
Sent: Monday, March 15, 2021 5:19 PM
To: Millett, John <Millett.John@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>
Subject: Any word on CSPAR timing?

Nick Conger
Press Secretary
Environmental Protection Agency
202-941-1116 (mobile)
[Newsroom](#)

Message

From: Grundler, Christopher [grundler.christopher@epa.gov]
Sent: 2/17/2021 2:09:23 PM
To: Cassady, Alison [Cassady.Alison@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: Following up with EPA Offices on process for revising the US NDC

Sounds good

Christopher Grundler, Director
Office of Atmospheric Programs
U.S. Environmental Protection Agency
202.343.9140 (o)
734.645.5221 (m)

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Wednesday, February 17, 2021 9:08 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: Following up with EPA Offices on process for revising the US NDC

I informed folks of this on a call yesterday but will confirm with them after we have our first working group meeting—just in case.

Alison L. Cassady
Deputy Chief of Staff for Policy
U.S. Environmental Protection Agency
Cell: (202) 941-6036

From: Grundler, Christopher <grundler.christopher@epa.gov>
Sent: Tuesday, February 16, 2021 10:00 PM
To: Cassady, Alison <Cassady.Alison@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: Following up with EPA Offices on process for revising the US NDC

Hi Alison:

Ex. 5 Deliberative Process (DP)

Thanks, Chris

To: OW, OLEM, ORD, OCCSP

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Christopher Grundler, Director
Office of Atmospheric Programs
U.S. Environmental Protection Agency
202.343.9140 (o)
734.645.5221 (m)

Message

From: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Sent: 2/19/2021 1:15:19 AM
To: Nunez, Alejandra [Nunez.Alejandra@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]; Hockstad, Leif [Hockstad.Leif@epa.gov]; Ferland, Henry [Ferland.Henry@epa.gov]
Subject: RE: G7 Communique (zero draft) - Consolidated interagency comments - comments by COB Thursday for Consolidation

My thanks as well, John. I have no comments on this portion of the communique. Best,

Tomás

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Thursday, February 18, 2021 6:59 PM
To: Shoaff, John <Shoaff.John@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>; Ferland, Henry <Ferland.Henry@epa.gov>
Subject: RE: G7 Communique (zero draft) - Consolidated interagency comments - comments by COB Thursday for Consolidation

Thank you, John. I reviewed the document and have no suggestions either.
 Ale

From: Shoaff, John <Shoaff.John@epa.gov>
Sent: Thursday, February 18, 2021 5:31 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>; Ferland, Henry <Ferland.Henry@epa.gov>
Subject: FW: G7 Communique (zero draft) - Consolidated interagency comments - comments by COB Thursday for Consolidation

Tomas and Ale,

Ex. 5 Deliberative Process (DP)

John

JOHN SHOAFF | DIRECTOR
 OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
 OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-C
 1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.John@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE



From: Ferland, Henry <Ferland.Henry@epa.gov>

Sent: Thursday, February 18, 2021 9:35 AM

To: Clarke, Deirdre <clarke.deirdre@epa.gov>; Irving, Bill <Irving.Bill@epa.gov>; Desai, Mausami <Desai.Mausami@epa.gov>; Blubaugh, Jim <Blubaugh.Jim@epa.gov>; Scavo,

Kimber <Scavo.Kimber@epa.gov>; Galperin, Diana <Galperin.Diana@epa.gov>; Crimmins, Allison

<Crimmins.Allison@epa.gov>; Fawcett, Allen <Fawcett.Allen@epa.gov>

Cc: Shoaff, John <Shoaff.John@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>; Gunning, Paul

<Gunning.Paul@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>

Subject: FW: G7 Communique (zero draft) - Consolidated interagency comments - comments by COB Thursday for Consolidation

Hey all:

Many of you were on this original distribution – but wanted to resend and ask that if you have any comments you route

Ex. 5 Deliberative Process (DP)

I will run any comments through our IO as needed.

Thx all,

H

HENRY FERLAND | *INTERNATIONAL COORDINATOR*

U.S. EPA OFFICE OF AIR & RADIATION

Ferland.Henry@epa.gov | 1-202-343-9330

From: Chang, Elle <chang.elle@epa.gov>

Sent: Wednesday, February 17, 2021 2:30 PM

To: Ferland, Henry <Ferland.Henry@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; Irving, Bill <Irving.Bill@epa.gov>; Desai, Mausami <Desai.Mausami@epa.gov>; Blubaugh, Jim <Blubaugh.Jim@epa.gov>; Galperin, Diana <Galperin.Diana@epa.gov>; Kovner, Karissa <Kovner.Karissa@epa.gov>; Nazef, Laura <Nazef.Laura@epa.gov>; Sims, JaniceHQ <Sims.JaniceHQ@epa.gov>; Adrian, Stephanie <Adrian.Stephanie@epa.gov>; Horan, Andrew <Horan.Andrew@epa.gov>; Socci, Anthony <Socci.Anthony@epa.gov>; Finman, Hodayah <Finman.Hodayah@epa.gov>; Torney, Maxwell <torney.maxwell@epa.gov>; Huber, Patrick <Huber.Patrick@epa.gov>; Buckley, Katherine <Buckley.Katherine@epa.gov>; Correa, Sylvia <Correa.Sylvia@epa.gov>; Novikoff, Joshua <Novikoff.Joshua@epa.gov>; Hill-Macon, Cam <Hill-Macon.Cam@epa.gov>; Besch, Brianna <besch.brianna@epa.gov>; Chang, Elle <chang.elle@epa.gov>; Picardi, Rick <Picardi.Rick@epa.gov>; Cochran, Kimberly <cochran.kimberly@epa.gov>; Collins, Victoria <Collins.Victoria@epa.gov>; Wittstruck, Nathan <Wittstruck.Nathan@epa.gov>; Bridge, Jarrod <bridge.jarrod@epa.gov>; Salyer, Kathleen <Salyer.Kathleen@epa.gov>; Radtke, Meghan <Radtke.Meghan@epa.gov>; Halloran, Priscilla <Halloran.Priscilla@epa.gov>; Krejcik, Krystal <krejck.krystal@epa.gov>; Yavrom, Deebea <yavrom.deebea@epa.gov>; Yohannes, Lia <Yohannes.Lia@epa.gov>; Robiou, Grace <Robiou.Grace@epa.gov>; Benson, Robert <Benson.Robert@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>;

Mourant, Alex <Mourant.Alex@epa.gov>; Christopher, Rebecca <Christopher.Rebecca@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; Goldman, Lisa <Goldman.Lisa@epa.gov>; Berns, Anne <Berns.Anne@epa.gov>; LaVay, Maggie <LaVay.Maggie@epa.gov>; Keating, Terry <Keating.Terry@epa.gov>; VanDrunick, Suzanne <vanDrunick.Suzanne@epa.gov>; Greene, Rick <Greene.Rick@epa.gov>; Kenny, Shannon <Kenny.Shannon@epa.gov>; Stephenson, Jenny <Stephenson.Jenny@epa.gov>; HarrisSW@state.gov; PhelpsE@state.gov; DawsonCL@state.gov; DeRosaBM@state.gov; Karr-ColqueCJ@state.gov; GoldbergCA@state.gov; foxem@state.gov; AustinND2@state.gov; GriffithJH@state.gov; Holland, Keri J <HollandKJ@state.gov>; Nichols, Elizabeth S <NicholsES@state.gov>; Weber, Katherine P <WeberKP@state.gov>; Clark, Andrew D <ClarkAD@state.gov>; Limon, Maureen W <LimonMW@state.gov>; AdamsV@state.gov; Elizabeth.Hearn@treasury.gov; Jeanny.Chong@treasury.gov; Elizabeth.Lien@treasury.gov; Nicholas.Strychacz@treasury.gov; Nirupama.Pradhan@treasury.gov; James.Woodsome2@treasury.gov; Brendan.Gribbons@treasury.gov; ksaldana@usaid.gov; kye@usaid.gov; kkedlaya@usaid.gov; holmes@usaid.gov; cromanik@usaid.gov; ccornerdolloff@usaid.gov; Sarah Stewart <Ex. 6 Personal Privacy (PP)>; elizabeth.goffi@trade.gov; Jennifer.Lyon@Hq.Doe.Gov; Nicholas.Sherman@hq.doe.gov; russell.conklin@hq.doe.gov; michael.apicelli@hq.doe.gov; elizabeth.mclanahan <elizabeth.mclanahan@noaa.gov>; trisha.bergmann@noaa.gov; Sammi Dowdell <samantha.dowdell@noaa.gov>; caitlin.blair@noaa.gov; egolan@oce.usda.gov; jean.buzby@usda.gov; Cathy.McKinnell@usda.gov; Elizabeth.Riley@usda.gov; Sharynne.Nenon@fas.usda.gov; amy.freitas@fas.usda.gov; jconje@fs.fed.us; Peter.Schmeissner@hhs.gov; Lynn.Filpi@hhs.gov

Subject: Please advise NLT COB 2/19: G7 Communique (zero draft) - Consolidated interagency comments

Dear Interagency G7 Colleagues,

Ex. 5 Deliberative Process (DP)

Note: We are still in the process of updating our interagency contact list. If you are no longer the appropriate point of contact and/or recommend that others be included, please reach out to me directly with that information.

Thank you all,

Elle Chang

Office of International Affairs

U.S. Environmental Protection Agency

Phone: +1 (202) 564-2956

chang.elle@epa.gov

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 2/24/2021 4:43:47 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Serassio, Helen [Serassio.Helen@epa.gov]
Subject: CH4 CRA
Attachments: Methane EPA Recommendation re CRA 1-23-21.docx

Importance: High

Gautam / Matt / Andy,

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

We should probably aim to have this by early next week.

I welcome any additional thoughts from Joe and Tomas.

Thanks,
Melissa

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 2/12/2021 4:17:12 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
CC: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Subject: Re: methane CRA

Ex. 5 Attorney Client (AC)

Sent from my iPhone

On Feb 11, 2021, at 7:46 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Ex. 5 Attorney Client (AC)

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Thursday, February 11, 2021 5:47 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: methane CRA

Ok!

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Thursday, February 11, 2021 5:47 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: methane CRA

Hang on. There some complexity around doing this. More later.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Thursday, February 11, 2021 5:40 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: FW: methane CRA

Hi Joe, FYI – would you like me to take this one? Best,

Tomás

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Thursday, February 11, 2021 3:25 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: Fwd: methane CRA

Ex. 5 Attorney Client (AC)

Melissa

Sent from my iPhone

Begin forwarded message:

From: "Doniger, David" <ddoniger@nrdc.org>
Date: February 11, 2021 at 2:33:07 PM EST
To: "Hoffer, Melissa" <hoffer.melissa@epa.gov>
Subject: methane CRA

Hi Melissa,

Belated congratulations on your appointment!

Do you have a moment to chat on the question of a methane CRA? NRDC is in the same place as EDF in thinking this would be a good move in several dimensions. Would like to share our thinking.

Best,

David

DAVID DONIGER
*Senior Strategic Director
Climate and Clean Energy Program*

NATURAL RESOURCES
DEFENSE COUNCIL
1152 15TH STREET NW, SUITE 300

WASHINGTON, DC 20005
T 202.289.2403
F 202.289.1060
M 202.321.3435
DDONIGER@NRDC.ORG
[@DAVIDDONIGER](https://twitter.com/DAVIDDONIGER) (TWITTER)
[NRDC.ORG/EXPERTS/DAVID.DONIGER](https://www.nrdc.org/experts/david-doniger) (BLOG)
[NRDC.ORG](https://www.nrdc.org)

Please save paper.
Think before printing.

Message

From: Paul Billings [Paul.Billings@lung.org]
Sent: 2/22/2021 3:30:20 PM
To: Enobakhare, Rosemary [Enobakhare.Rosemary@epa.gov]
CC: Cassady, Alison [Cassady.Alison@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: EO 13990 List to OMB?
Attachments: ATT00001.txt

Thank you for sharing.

I know that public interest in this information is high, so I hope it will be posted publicly soon.

Thanks
 Paul

Paul Billings
 National Senior Vice President, Public Policy
 American Lung Association
 Direct 202-785-3988

From: Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>
Sent: Monday, February 22, 2021 10:04 AM
To: Paul Billings <Paul.Billings@lung.org>
Cc: Cassady, Alison <Cassady.Alison@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: EO 13990 List to OMB?

Hey Paul,

Below is some of the information you might be looking for. Let me know if you need anything else. Also, it's important to note that a broader list of actions we anticipate will be shared as part of the Spring Regulatory Agenda. Please don't share the info below widely.

EPA, in accordance with President Biden's Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, has conducted a review of regulatory actions issued under the previous Administration. As directed by the Executive Order, EPA has sent to OMB a preliminary list of actions that we are considering revising or rescinding.

The preliminary list is now with OMB to review, and in coordination with EPA and other agencies, it will determine appropriate next steps. As stated in the EO, the following regulatory actions were among those included in the review:

- Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration
- The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rules (Parts 1 and 2)
- National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review.

From: Paul Billings <Paul.Billings@lung.org>
Sent: Friday, February 19, 2021 3:56 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>
Cc: Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>
Subject: EO 13990 List to OMB?

Hi Joe and Alison

As I understand [EO 13990](#), EPA is supposed to submit the list climate rules that “will be completed by December 31, 2021 and that would be subject to OMB review” to OMB and the National Climate Advisor by today – February 19, 2021 – which is 30 days after EO 13990 was signed.

Can you share the list or direct me to the website where the list will be posted?

Thanks so much

Paul

Paul Billings

National Senior Vice President | Public Policy

American Lung Association

1331 Pennsylvania Ave NW #1425 | Washington DC 20004

D: 202-785-3988

Lung HelpLine: 1-800-LUNGUSA

[Lung.org](#) | Paul.Billings@Lung.org

Pronouns: He/Him/His



Message

From: Kasman, Mark [Kasman.Mark@epa.gov]
Sent: 2/8/2021 10:02:57 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]; Ferland, Henry [Ferland.Henry@epa.gov]
CC: Dieu, Martin [Dieu.Martin@epa.gov]
Subject: FW: CANADA: Maximizing Climate Action Requires U.S.-Canada Cooperation
Attachments: Climate Matrix - Canadian Lines of Action with Bilateral Linkages.xlsx; WCI participatingjurisdiction-comparativetable-en.pdf; 2021.02.08 CABLE Climate Engagement w Canada 21-Ottawa-164.docx

Joe,

I thought you and your staff might be interested in this cable, and additional information from the U.S. Embassy in Ottawa about Canada's climate plans and hopes to partner with the United States.

Mark

Mark S. Kasman
Acting Assistant Administrator
Office of International and Tribal Affairs
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Tel: (202)564-2024

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 2/18/2021 4:11:56 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Subject: OK SIP and Tribal Issues
Attachments: SAFETEA.BriefingOptionsPaper.2021.2.17.pdf

Joe / Tomas,

I wanted to make sure you were aware of the tribal issues raised in connection with the pending OK SIP revisions; briefing paper attached. Ex. 5 Attorney Client (AC)

Thanks,
Melissa

Message

From: MassMailer [massmailer@epa.gov]
Sent: 1/22/2021 12:15:06 AM
To: MassMailer [massmailer@epa.gov]
Subject: Message from the Chief of Staff



MESSAGE FROM THE CHIEF OF STAFF

This email message is being sent to EPA employees.

Dear Colleagues,

First, allow me to introduce myself. I'm Dan Utech, and it is my privilege to join the EPA team as the incoming Chief of Staff.

As you know, President Biden has nominated Michael Regan, Secretary of the North Carolina Department of Environment and Natural Resources, as the next Administrator. While we await Secretary Regan's confirmation, I am grateful that Jane Nishida will be serving as Acting Administrator, providing us with steady leadership.

Yesterday, President Biden signed [an Executive Order on Protecting Public Health and the Environment and Restoring Resilience to the Impacts of Climate Change](#), which states that: "it is the policy of my Administration to listen to the science; to improve public health and the environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to restore and expand our national treasures and monuments; and to promote economic justice and the creation of the well-paying union jobs necessary to deliver on these goals." EPA will be at the heart of this effort, guided by science as we move to achieve these goals and address other threats to public health and the environment.

President Biden also signed [an Executive Order On Advancing Racial Equity and Support for Underserved Communities Within the Federal Government](#). In addition to providing a framework for advancing equity, it revokes the EO 13950-Combating Race and Ethnicity Bias.

In the coming days and weeks, we will be building out our leadership team. At the end of this email, please find an up-to-date list of acting leaders as well as a list of the incoming appointees who onboarded this week. As we and other members of the team get up and running, we look forward to learning from you and beginning to work together.

I know that the work of EPA relies on the dedicated professionals who carry the agency's mission forward from one Administration to the next. Thank you for your ongoing service to EPA and our country, and for your efforts to protect Americans' health and our environment.

Finally, I want to acknowledge that we begin this transition during the COVID-19 pandemic. I want to assure you that public health is our top priority. As a first step in that regard, yesterday President Biden signed [an Executive Order requiring masks and social distancing in federal buildings](#). This is not a change in telework status but rather a measure to further protect those whose work requires in-person interaction.

Thank you in advance for bearing with us as we onboard amidst these unprecedented circumstances. I am honored to be part of this team.

As we look to our shared work ahead, please take a few minutes to view this [brief video message](#) from President Biden on his commitment in his own words.

Sincerely,

Dan Utech
Chief of Staff

Current and acting leadership:

Acting Administrator: Jane Nishida
OCFO: David Bloom
OAR: Joseph Goffman
OW: Radhika Fox
OLEM: Barry Breen
OCSPP: Michal Freedhoff (as of 1/25)
ORD: Jennifer Orme-Zavaleta
OGC: Melissa Hoffer
OECA: Larry Starfield
OITA: Mark Kasman
OMS: Donna Vizian
OP: Victoria Arroyo
OCIR: Robin Richardson
OPEEE: Rosemary Enobakhare
OPA: Lindsay Hamilton
R1: Deb Szaro
R2: Walter Mugdan
R3: Diana Esher
R4: John Blevins
R5: Cheryl Newton
R6: David Gray
R7: Ed Chu
R8: Deb Thomas
R9: Deb Jordan
R10: Michelle Pirzadeh

Members of the incoming EPA leadership team who onboarded this week:

Radha Adhar, Deputy Associate Administrator for Congressional Affairs

Radha Adhar joins EPA from the Office of Senator Tammy Duckworth where she served as Senior Policy Advisor for Science. In 2016 and 2017, Radha was an Advisor to the Jobs Strategy Council in the Office of the Secretary at the Energy. She has also worked at the Sierra Club and the Natural Resources Defense Council, focusing on the Beyond 2012 Earth Summit. Radha holds a M.S. in Energy Policy and Climate Change Science from Johns Hopkins University and the University of North Carolina at Chapel Hill.

Victoria Arroyo, Associate Administrator for Policy

Vicki Arroyo returns to EPA after having served as Executive Director of the Georgetown Climate Center for 12 years and policy and supporting leading states and cities in their efforts to address and prepare for climate change. Previously, she served at the Center on Global Climate Change as Vice President for Policy Analysis and General Counsel where she directed Policy, adaptation, economics, and U.S. policy programs for a decade and was Managing Editor of the Center's book, Climate Strategies and Solutions. She was recently Chair of the Executive Committee of the Transportation Research Board.

of Sciences, Engineering, and Medicine and has served on numerous other boards and committees advising the National Academy of Sciences, the National Center for Atmospheric Research, the U.S. Energy Information Administration, and the California Air Resources Board. Vicki previously served in two offices at EPA, the Office of Air and Radiation and the Office of Research and Development, where she led the development of standards under the Clean Air Act. Vicki also served as Policy Director for the Louisiana Department of Environmental Quality, drafting legislation that reduced toxic air pollution by 50% and linking tax breaks to firms' environmental records. She was elected to the College of Environmental Lawyers in 2018 and holds a B.S. in biology from Emory and a M.P.A. from Harvard and a J.D. from the University of California, Berkeley.

Tomás Elías Carbonell, Deputy Assistant Administrator for Stationary Sources, Office of Air and Radiation

Since 2012, Tomás Carbonell has held a number of positions at the Environmental Defense Fund (EDF), most recently as the Director of Regulatory Policy for EDF's U.S. Clean Air program. His work included leading EDF's litigation and regulatory strategy for the Clean Power Plan and carbon pollution standards for new, modified and reconstructed power plants; defending against claims of hazardous air pollution from power plants and industrial sources; and advocacy in defense of EPA's use of rigorous health and economic analysis. From 2008 until 2012, Tomás was an Associate at Van Ness Feldman, LLP, where he counseled diverse clients on regulatory matters related to climate change, clean energy, and environmental and electricity regulation. He has a J.D. and a M.A. in degrees in Environmental Change and Management and Development Economics from the University of Oxford, and a B.S. in Chemical Engineering, Economics, and Multidisciplinary Studies from North Carolina State University.

Alison Cassady, Deputy Chief of Staff for Policy

Alison Cassady most recently served as the Deputy Staff Director for the U.S. House of Representatives, Select Committee on the Environment, where she managed a team of lawyers and scientists to conceptualize, draft and deliver a congressional policy roadmap for reducing greenhouse gas emissions by 2050 and building a clean energy economy that values workers and advances environmental justice. Prior to this, she was the Managing Director of the Energy and Environment Team at the Center for American Progress, providing strategic policy support to a team working on climate change policy, public lands conservation, and ocean protection. Alison also served as a staff member on the Committee on Energy and Commerce and Committee on Oversight and Government Reform. She holds a Master of Public Administration from the University School of Public and Environmental Affairs and a B.S. in Foreign Service from Georgetown University School of Foreign Service.

Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection Programs

Dimple Chaudhary joins EPA after serving as Deputy Litigation Director at the Natural Resources Defense Council. Her work focused on and advocacy to protect communities from drinking water contamination and exposure to toxics. Dimple was lead counsel for the city of Flint, Michigan, in a case brought to address lead contamination in the city's drinking water, which led to a settlement requiring the replacement of all Flint's lead service lines within three years. Prior to joining NRDC, she was an associate at WilmerHale and a law clerk for Judge Carol Bagley Amon of the United States District Court for the Eastern District of New York. She holds a bachelor's degree in Environmental Studies from the University of California, a master's degree in urban planning from the London School of Economics, and a J.D. from Columbia Law School.

Rosemary Enobakhare, Associate Administrator for Public Engagement and Environmental Education

Rosemary Enobakhare returns to EPA where she served as the Deputy Associate Administrator for Public Engagement and Environmental Education, leading the agency's community outreach and strategic engagement plans. Since then, she has been the Deputy Director of The Hub Project, developing and managing large-scale advocacy campaigns that shift the conversation around top priorities. She also worked for two years as the Campaign Director at the Clean Water for All Campaign, serving as the principal point of contact for stakeholders and overseeing all aspects of the campaign's daily operations. Rosemary is a graduate of Spelman College with a B.A. in Economics.

Philip Fine, Principal Deputy Associate Administrator for Policy

Dr. Fine joins EPA after a 15-year career at the South Coast Air Quality Management District in Southern California. He served as the Deputy Executive Officer for the Planning, Rule Development & Area Sources Division, where he oversaw all activities related to air quality, including development of State Implementation Plans and Air Quality Management Plans, strategies and regulations.

meteorology and forecasting, air quality evaluation, air toxics risk assessment, emissions inventories, socioeconomic programs, and enforcement for area sources. Prior to this role, Dr. Fine's previous responsibilities at South Coast AQMD included ambient air monitoring, laboratory services, quality assurance, and source testing. Dr. Fine served on the California Air Resources Board's legislatively mandated Research Screening Committee, and has also served on several EPA Clean Air Scientific Advisory panels. Before joining the South Coast AQMD, Dr. Fine was a Research Assistant Professor at the University of Southern California where he taught courses and conducted extensive research on particulate pollution, air monitoring technologies, and climate change. He has over 50 peer-reviewed scientific publications to date. He received his Ph.D. from the California Institute of Technology in Science & Engineering, and his bachelor's degree in Mechanical Engineering and Materials Science & Engineering from the University of California, Berkeley.

Radhika Fox, Principal Deputy Assistant Administrator, Office of Water

Prior to her appointment at EPA, Radhika Fox was the Chief Executive Officer of the US Water Alliance, a national nonprofit organization advancing policies and programs that build a sustainable water future for all. She has more than 20 years of experience leading programs and issue-based advocacy campaigns on the most salient water issues facing the nation including climate change, innovative finance, water infrastructure investment, equity, and the evolution of the One Water movement. Previously, she served as the Deputy Director of Policy and Government Affairs for the San Francisco Public Utilities Commission, which is responsible for providing 24/7 water and municipal power services to millions of Bay Area residents. She also served as the Federal Policy Director at PolicyLink, where she led the organization's policy agenda on a wide range of issues, including infrastructure investment, transportation, sustainability, economic inclusion, and workforce development. Radhika has a M.A. in City and Regional Planning from the University of California, Berkeley and a B.A. in Religion and Philosophy from Columbia University.

Michal Ilana Freedhoff, Principal Deputy Assistant Administrator for Chemical Safety and Pollution Prevention

Michal Ilana Freedhoff joined the Senate Environment and Public Works Committee as its Minority Director of Oversight and Policy. She has more than twenty years of government experience, beginning in 1996 in then-Congressman Ed Markey's office as a Policy and Engineering fellow after receiving a Ph.D. in physical chemistry at the University of Rochester. She has also served on the House Science Committee, the House Select Committee on Energy Independence and Global Warming, the House Committee on Environment and Natural Resources, the House Committee on Energy and Commerce, the House Committee on the Environment and the House Natural Resources Committee. Her legislative work includes the fuel economy provisions of the Energy Independence and Security Act, a law requiring the creation of an online database of dangerous consumer products, the authorization of the Toxic Substances Control Act, and 2019 legislation to address PFAS contamination. She lives in San Francisco with her husband and four children.

Joseph Goffman, Principal Deputy Assistant Administrator, Office of Air and Radiation

Joe Goffman returns to EPA after serving from 2009 - 2017 as the Associate Assistant Administrator for Climate and Air Quality in the Office of Air and Radiation, where he provided policy and legal counsel on a wide range of climate policy and Clean Air Act implementation issues and rulemakings. Since 2017 he has served as the Executive Director of the Environmental and Energy Law Center at Harvard Law School where he led a team of attorneys and communications specialists providing information and analysis to government decision makers and the media, and offering innovative responses on emerging issues in the areas of federal energy and electricity law and environmental and administrative law as well as in selected areas of corporate law. Joe also served on the Senate Committee on Environment and Public Works as the Democratic Chief Counsel and Majority Senior Counsel. He holds law degrees from Yale University.

Lindsay Hamilton, Associate Administrator for Public Affairs

Lindsay Hamilton comes to EPA from Climate Nexus, a communications non-profit, where she was senior director of communications strategy. She also spent time as the chief spokesperson for The George Washington University, the chief of staff and director of the Center for American Progress, and she served in roles in both the U.S. House of Representatives and the U.S. Senate. In her career, she worked for ABC News. Lindsay earned a B.A. in international affairs and political science from The George Washington University.

University. She earned her master's degree from the Columbia University School of International and Public Affairs. Omaha, Nebraska.

Sinceré Harris, White House Liaison

Sinceré Harris joins EPA with years of senior-level experience in developing strategies to define, communicate and a 2015 she has served as the Executive Director of the Pennsylvania Democratic Party, where she was at the forefront coordinated campaigns, approving and managing multi-million dollar coordinated budgets, and led the formation of the 2020, Sinceré was named the Pennsylvania Senior Advisor for Joe Biden for President, including advising a team of organizing, voter protection, political and coalition building, and communications. She previously worked as the Assistant Affairs for the Commonwealth of Pennsylvania. Sinceré has a degree in Psychology from Temple University.

Melissa Hoffer, Principal Deputy General Counsel

Prior to joining EPA, Melissa Hoffer was with the Massachusetts Attorney General's Office where she served as the Environment Bureau and oversaw the work of the Bureau's attorneys on matters including prosecuting civil and criminal environmental laws, energy policy, ratepayer advocacy, defensive cases, and affirmative advocacy, including litigation Mercury and Air Toxics Standards. In 2020, Melissa was inducted as a Fellow into the American College of Environmental received a 2020 Meritorious Service Award from the National Association of Attorneys General, a Massachusetts Law award in 2013, and a Boston Bar Association President's award in 2007. Melissa served for over five years as a Conservation Law Foundation and director of its Healthy Communities and Environmental Justice Program, and director Advocacy Center. Melissa practiced at WilmerHale for many years where her focus was environmental law and litigation Northeastern University School of Law, an M.Ed. from the University of Massachusetts, and a B.A. from Hampshire College education.

Casey Katims, Deputy Associate Administrator for Intergovernmental Affairs

Casey Katims most recently served as Director of Federal and Inter-State Affairs for Washington Governor Jay Inslee advisor on federal policy issues and directing the state of Washington's engagement with Congress, the White House governors' offices and various other stakeholders in D.C. Prior to this role, he spent five years as a policy advisor in Representatives for Rep. Suzan DelBene, developing bills and amendments on a range of issues and helping manage House Ways and Means Committee. Casey has a degree in Political Science from Vassar College and grew up in E

John Lucey, Special Assistant to the Administrator

John Lucey joins EPA from the North Carolina Department of Environmental Quality (NCDEQ), starting as a Legislative served since 2019 as the Chief Strategy Officer, helping create and manage the strategic implementation of both North Plan and Risk and Resiliency Plan. He also provided guidance to the Department on significant State initiatives including Ash Settlement, the North Carolina Environmental Justice and Equity Board and the Chemours Consent Order. John Science from North Carolina State University and an Associate of Arts degree from Central Piedmont Community College

Dan Utech, Chief of Staff

Dan Utech has over 20 years of experience in the federal environmental and energy sectors., including as a President 1997/1998 with assignments at EPA, the National Oceanic and Atmospheric Administration and the U.S. Forest Service served at the White House Domestic Policy Council, including as Deputy Assistant to the President for Energy and Climate the White House and cross-governmental teams to implement and coordinate communications for President Obama oversaw the Administration's energy and climate change strategy, and promoted the President's agenda in Congress Advisor to the Secretary at the U.S. Department of Energy, where his responsibilities included budget development and initiatives such as nuclear waste. Prior to his federal agency experience, Dan was Senior Advisor to Senator Hillary Clinton Senator on all energy and environmental issues, including climate change, clean diesel, and energy efficiency, as well

toxic substances and endangered species. He has been a lecturer at the Yale School of Forestry and Environmental Studies. He received an M.E.S. degree. He also holds degrees from the Yale School of Management and Amherst College.

Appointment

From: Tejada, Matthew [Tejada.Matthew@epa.gov]
Sent: 1/27/2021 11:34:03 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Shaw, Betsy [Shaw.Betsy@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Lee, Charles [Lee.Charles@epa.gov]
Subject: Check in on EJ/Climate
Location: Microsoft Teams Meeting
Start: 2/1/2021 9:30:00 PM
End: 2/1/2021 10:00:00 PM
Show Time As: Tentative

Required Attendees: Goffman, Joseph; Shaw, Betsy; Carbonell, Tomas; Charles Lee

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

Ex. 6 Personal Privacy (PP) United States, Washington DC

Phone Conference ID: **Ex. 6 Personal Privacy (PP)**

[Find a local number](#) | [Reset PIN](#)

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.

[Learn More](#) | [Meeting options](#)

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 1/22/2021 12:08:03 AM
To: Nishida, Jane [Nishida.Jane@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]
CC: Payne, James (Jim) [payne.james@epa.gov]
Subject: FW: Letter
Attachments: Draft GC Abeyance Letter to DOJ 01-21-20docx.pdf

Importance: High

For your records, with thanks to Jim for all of his help.

Melissa

From: Hoffer, Melissa
Sent: Thursday, January 21, 2021 7:05 PM
To: 'jean.williams@usdoj.gov' <jean.williams@usdoj.gov>; bruce.gelber@usdoj.gov
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: Letter
Importance: High

Hi Jean and Bruce:

Please see the attached.

Thanks and regards,

Melissa A. Hoffer
Acting General Counsel
U.S. EPA
202.440.1671
hoffer.melissa@epa.gov

Message

From: Millett, John [Millett.John@epa.gov]
Sent: 3/14/2021 3:36:17 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Hengst, Benjamin [Hengst.Benjamin@epa.gov]; Birgfeld, Erin [Birgfeld.Erin@epa.gov]; Nunez, Alejandra [Nunez.Alejandra@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Subject: Fwd: AP story FYI

In case this hasn't already made the rounds ... link in Nick's email below.

“ Asked Friday about the proposal, the White House said discussions with the auto industry on a fuel emissions standard were still early. It declined to comment on whether the administration would accept an agreement that falls below the California deal or Obama-era standards, stressing that tough requirements would be needed to get popular and less-efficient SUVs off the road.”

Sent from my iPhone

Begin forwarded message:

From: "Conger, Nick" <Conger.Nick@epa.gov>
Date: March 13, 2021 at 11:09:22 AM EST
To: "Nunez, Alejandra" <Nunez.Alejandra@epa.gov>, "Millett, John" <Millett.John@epa.gov>
Subject: AP story FYI

<https://apnews.com/article/joe-biden-donald-trump-technology-climate-climate-change-fe2e9ea95ac1a987b63251eeb99433b9>

Nick Conger
EPA Press Secretary
202-941-1116

Message

From: Garbow, Avi [Garbow.Avi@epa.gov]
Sent: 1/27/2021 1:10:57 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: Marna McDermott's resume
Attachments: 2020.RESUME Marna McDermott.pdf

Joe,

Hope all's going well so far. It is so comforting to see you back in the saddle leading OAR.

Ex. 6 Personal Privacy (PP)

avi

From: Marna McDermott <marnamcd<Ex. 6 Personal Privacy (PP)>
Sent: Tuesday, January 26, 2021 7:37 PM
To: Garbow, Avi <Garbow.Avi@epa.gov>
Subject: Marna McDermott's resume

Hi Avi,

Thanks for taking the time to talk this evening. As I mentioned, I submitted my resume (attached) through the transition website before the inauguration, so it should still be in the system somewhere. Nonetheless, I would appreciate any help bringing it to the attention of folks actually hiring for positions at EPA. I would be very excited to return to the Agency and to serve in the Biden-Harris Administration!

Thanks,
Marna

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 1/21/2021 10:08:34 PM
To: Utech, Dan [Utech.Dan@epa.gov]
CC: Nishida, Jane [Nishida.Jane@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: Re: Draft GC Abeyance Letter to DOJ

OK. I will get this out after this call. One substantive change from DOJ is to strike reference to my discussion with DOJ, which I will do.

Thanks,
Melissa

Sent from my iPhone

On Jan 21, 2021, at 4:24 PM, Utech, Dan <Utech.Dan@epa.gov> wrote:

Good here as well.

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Thursday, January 21, 2021 2:16 PM
To: Nishida, Jane <Nishida.Jane@epa.gov>; Utech, Dan <Utech.Dan@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Garbow, Avi <Garbow.Avi@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: Draft GC Abeyance Letter to DOJ
Importance: High

Privileged and Confidential—ACP/WP

Hi all,

Ex. 5 Attorney Client (AC)

Thanks,
Melissa

Message

From: Vijayan, Abi [Vijayan.Abi@epa.gov]
Sent: 1/25/2021 8:22:13 PM
To: Packard, Elise [Packard.Elise@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Culligan, Kevin [Culligan.Kevin@epa.gov]; Harvey, Reid [Harvey.Reid@epa.gov]; Hutson, Nick [Hutson.Nick@epa.gov]; Swanson, Nicholas [Swanson.Nicholas@epa.gov]; Baker, Sarah [baker.sarah@epa.gov]; Vetter, Cheryl [Vetter.Cheryl@epa.gov]; Santiago, Juan [Santiago.Juan@epa.gov]
CC: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Hogan, Stephanie [Hogan.Stephanie@epa.gov]; Hoffman, Howard [hoffman.howard@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]; Greenglass, Nora [Greenglass.Nora@epa.gov]; Schramm, Daniel [Schramm.Daniel@epa.gov]; Conrad, Daniel [conrad.daniel@epa.gov]; Krallman, John [krallman.john@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]
Subject: RE: Summary of D.C. Circuit opinion in American Lung Ass'n v. EPA (CPP Repeal/ACE)
Attachments: ACE D.C. Circuit opinion 1.19.21.pdf

Also attaching the decision, and please let me know if you need any other documents from this case.

Abi Vijayan | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Vijayan, Abi
Sent: Monday, January 25, 2021 3:21 PM
To: Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Harvey, Reid <Harvey.Reid@epa.gov>; Hutson, Nick <Hutson.Nick@epa.gov>; Swanson, Nicholas <Swanson.Nicholas@epa.gov>; Baker, Sarah <baker.sarah@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Greenglass, Nora <Greenglass.Nora@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Krallman, John <krallman.john@epa.gov>; Doster, Brian <Doster.Brian@epa.gov>
Subject: Summary of D.C. Circuit opinion in American Lung Ass'n v. EPA (CPP Repeal/ACE)

Hello all,

Please find attached a summary of the D.C. Circuit's recent decision in *American Lung Ass'n v. EPA* over the Clean Power Plan repeal, the Affordable Clean Energy rule, and the new CAA section 111(d) implementing regulations. Also attached is a corresponding summary of the Petitioners' briefs in this case for reference.

Note that this e-mail and attached materials are **not** being sent to Melissa Hoffer and Dimple Chaudhary in OGC, and Tomás Carbonell in OAR, due to our understanding that they are recused from this matter. Thanks to the OGC ACE litigation team (cc'd) for their assistance in compiling the summary, and please let us know if you have any questions.

Abi Vijayan | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 8, 2020

Decided January 19, 2021

No. 19-1140

AMERICAN LUNG ASSOCIATION AND AMERICAN PUBLIC
HEALTH ASSOCIATION,
PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY AND ANDREW
WHEELER, ADMINISTRATOR,
RESPONDENTS

AEP GENERATING COMPANY, ET AL.,
INTERVENORS

Consolidated with 19-1165, 19-1166, 19-1173, 19-1175,
19-1176, 19-1177, 19-1179, 19-1185, 19-1186, 19-1187,
19-1188

On Petitions for Review of a Final Action
of the Environmental Protection Agency

Steven C. Wu, Deputy Solicitor General, Office of the
Attorney General for the State of New York, argued the cause
for the State and Municipal petitioners and intervenor Nevada.

With him on the briefs were *Letitia James*, Attorney General, *Barbara D. Underwood*, Solicitor General, *Matthew W. Grieco*, Assistant Solicitor General, *Michael J. Myers*, Senior Counsel, *Andrew G. Frank*, Assistant Attorney General of Counsel, *Xavier Becerra*, Attorney General, Office of the Attorney General for the State of California, *Robert W. Byrne*, Senior Assistant Attorney General, *David A. Zonana*, Supervising Deputy Attorney General, *Jonathan A. Wiener*, *M. Elaine Meckenstock*, *Timothy E. Sullivan*, *Elizabeth B. Rumsey*, and *Theodore A.B. McCombs*, Deputy Attorneys General, *William Tong*, Attorney General, Office of the Attorney General for the State of Connecticut, *Matthew I. Levine* and *Scott N. Koschwitz*, Assistant Attorneys General, *Kathleen Jennings*, Attorney General, Office of the Attorney General for the State of Delaware, *Valerie S. Edge*, Deputy Attorney General, *Philip J. Weiser*, Attorney General, Office of the Attorney General for the State of Colorado, *Eric R. Olson*, Solicitor General, *Robyn L. Wille*, Senior Assistant Attorney General, *Clare E. Connors*, Attorney General, Office of the Attorney General for the State of Hawaii, *William F. Cooper*, Deputy Attorney General, *Aaron M. Frey*, Attorney General, Office of the Attorney General for the State of Maine, *Laura E. Jensen*, Assistant Attorney General, *Brian E. Frosh*, Attorney General, Office of the Attorney General for the State of Maryland, *John B. Howard, Jr.*, *Joshua M. Segal*, and *Steven J. Goldstein*, Special Assistant Attorneys General, *Maura Healey*, Attorney General, Office of the Attorney General for the Commonwealth of Massachusetts, *Melissa A. Hoffer* and *Christophe Courchesne*, Assistant Attorneys General, *Megan M. Herzog* and *David S. Frankel*, Special Assistant Attorneys General, *Dana Nessel*, Attorney General, Office of the Attorney General for the State of Michigan, *Gillian E. Wener*, Assistant Attorney General, *Keith Ellison*, Attorney General, Office of the Attorney General for the State of Minnesota, *Peter N. Surdo*, Special Assistant Attorney

General, *Aaron D. Ford*, Attorney General, Office of the Attorney General for the State of Nevada, *Heidi Parry Stern*, Solicitor General, *Gurbir S. Grewal*, Attorney General, Office of the Attorney General for the State of New Jersey, *Lisa J. Morelli*, Deputy Attorney General, *Hector Balderas*, Attorney General, Office of the Attorney General for the State of New Mexico, *Tania Maestas*, Chief Deputy Attorney General, *Joshua H. Stein*, Attorney General, Office of the Attorney General for the State of North Carolina, *Asher Spiller*, Assistant Attorney General, *Ellen F. Rosenblum*, Attorney General, Office of the Attorney General for the State of Oregon, *Paul Garrahan*, Attorney-in-Charge, *Steve Novick*, Special Assistant Attorney General, *Josh Shapiro*, Attorney General, Office of the Attorney General for the Commonwealth of Pennsylvania, *Ann R. Johnston*, Senior Deputy Attorney General, *Aimee D. Thomson*, Deputy Attorney General, *Peter F. Neronha*, Attorney General, Office of the Attorney General for the State of Rhode Island, *Gregory S. Schultz*, Special Assistant Attorney General, *Thomas J. Donovan, Jr.*, Attorney General, Office of the Attorney General for the State of Vermont, *Nicholas F. Persampieri*, Assistant Attorney General, *Mark Herring*, Attorney General, Office of the Attorney General for the Commonwealth of Virginia, *Donald D. Anderson*, Deputy Attorney General, *Paul Kugelman, Jr.*, Senior Assistant Attorney General and Chief, Environmental Section, *Caitlin Colleen Graham O'Dwyer*, Assistant Attorney General, *Robert W. Ferguson*, Attorney General, Office of the Attorney General for the State of Washington, *Christopher H. Reitz* and *Emily C. Nelson*, Assistant Attorneys General, *Joshua L. Kaul*, Attorney General, Office of the Attorney General for the State of Wisconsin, *Gabe Johnson-Karp*, Assistant Attorney General, *Karl A. Racine*, Attorney General, Office of the Attorney General for the District of Columbia, *Loren L. AliKhan*, Solicitor General, *Tom Carr*, City Attorney, Office of the City

Attorney for the City of Boulder, *Debra S. Kalish*, Senior Counsel, *Mark A. Flessner*, Corporation Counsel, Office of the Corporation Counsel for the City of Chicago, *Benna Ruth Solomon*, Deputy Corporation Counsel, *Jared Policicchio*, Supervising Assistant Corporation Counsel, *Kristin M. Bronson*, City Attorney, Office of the City Attorney for the City and County of Denver, *Lindsay S. Carder* and *Edward J. Gorman*, Assistant City Attorneys, *Michael N. Feuer*, City Attorney, Office of the City Attorney for the City of Los Angeles, *Michael J. Bostrom*, Assistant City Attorney, *James E. Johnson*, Corporation Counsel, New York City Law Department, *Christopher G. King*, Senior Counsel, *Marcel S. Pratt*, City Solicitor, City of Philadelphia Law Department, *Scott J. Schwarz* and *Patrick K. O'Neill*, Divisional Deputy City Solicitors, and *Thomas F. Pepe*, City Attorney, City of South Miami. *Morgan A. Costello* and *Brian M. Lusignan*, Assistant Attorneys General, Office of the Attorney General for the State of New York, *Gavin G. McGabe*, Deputy Attorney General, *Anne Minard*, Special Assistant Attorney General, Office of the Attorney General for the State of New Mexico, *Cynthia M. Weisz*, Assistant Attorney General, Office of the Attorney General for the State of Maryland, entered appearances.

Kevin Poloncarz argued the cause for Power Company Petitioners. With him on the briefs were *Donald L. Ristow* and *Jake Levine*.

Mark W. DeLaquil argued the cause for Coal Industry Petitioners. With him on the briefs were *Shay Dvoretzky*, *Charles T. Wehland*, *Jeffery D. Ubersax*, *Robert D. Cheren*, and *Andrew Grossman*.

Theodore Hadzi-Antich argued the cause for Robinson Enterprises Petitioners. With him on the briefs were *Robert Henneke* and *Ryan D. Walters*.

Sean H. Donahue and *Michael J. Myers* argued the causes for Public Health and Environmental Petitioners. On the briefs were *Ann Brewster Weeks*, *James P. Duffy*, *Susannah L. Weaver*, *Joanne Spalding*, *Andres Restrepo*, *Vera Pardee*, *Clare Lakewood*, *Howard M. Crystal*, *Elizabeth Jones*, *Brittany E. Wright*, *Jon A. Mueller*, *David Doniger*, *Benjamin Longstreth*, *Melissa J. Lynch*, *Lucas May*, *Vickie L. Patton*, *Tomas Carbonell*, *Benjamin Levitan*, *Howard Learner*, and *Scott Strand*. *Alejandra Nunez* entered an appearance.

David M. Williamson argued the cause and filed the briefs for Biogenic Petitioners.

Gene Grace, *Jeff Dennis*, and *Rick Umoff* were on the brief for petitioners American Wind Energy Association, et al.

Theodore E. Lamm and *Sean B. Hecht* were on the brief for *amicus curiae* Thomas C. Jorling in support of petitioners.

Gabriel Pacyniak, *Brent Chapman*, and *Graciela Esquivel* were on the brief for *amici curiae* the Coalition to Protect America's National Parks and the National Parks Conservation Association in support of petitioners.

Deborah A. Sivas and *Matthew J. Sanders* were on the brief for *amici curiae* Administrative Law Professors in support of petitioners.

Hope M. Babcock was on the brief for *amici curiae* the American Thoracic Society, et al. in support of petitioners.

Richard L. Revesz and *Jack Lienke* were on the brief for *amicus curiae* the Institute for Policy Integrity at New York University School of Law in support of petitioners.

Steph Tai was on the brief for *amici curiae* Climate Scientists in support of petitioners.

Michael Burger and *Collyn Peddie* were on the brief for *amicus curiae* the National League of Cities, et al. in support of petitioners.

Keri R. Steffes was on the brief for *amici curiae* Faith Organizations in support of petitioners.

Shaun A. Goho was on the brief for *amici curiae* Maximilian Auffhammer, et al. in support of petitioners.

Ethan G. Shenkman and *Stephen K. Wirth* were on the brief for *amici curiae* Patagonia Works and Columbia Sportswear Company in support of petitioners.

Mark Norman Templeton, *Robert Adam Weinstock*, *Alexander Valdes*, and *Benjamin Nickerson* were on the brief for *amicus curiae* Professor Michael Greenstone in support of petitioners.

Nicole G. Berner and *Renee M. Gerni* were on the brief for *amicus curiae* the Service Employees International Union in support of petitioners.

Elizabeth B. Wydra, and *Brianne J. Gorod* were on the brief for *amici curiae* Members of Congress in support of petitioners.

Jonas J. Monast was on the brief for *amici curiae* Energy Modelers in support of petitioners.

Katherine Konschnik was on the brief for *amici curiae* Former Commissioners of the Federal Energy Regulatory Commission in support of petitioners.

Michael Landis, *Elizabeth S. Merritt*, and *Wyatt G. Sassman* were on the brief for *amici curiae* Environment America and National Trust for Historic Preservation in support of petitioners.

Cara A. Horowitz was on the brief for *amici curiae* Grid Experts in support of petitioners.

Eric Alan Isaacson was on the brief for *amici curiae* U.S. Senators in support of petitioners.

Jonathan D. Brightbill, Principal Deputy Assistant Attorney General, U.S. Department of Justice, and *Meghan E. Greenfield* and *Benjamin Carlisle*, Attorneys, argued the causes for respondents. With them on the brief was *Jeffrey Bossert Clark*, Assistant Attorney General.

Lindsay S. See, Solicitor General, Office of the Attorney General for the State of West Virginia, argued the cause for State and Industry intervenors in support of respondents regarding Affordable Clean Energy Rule. With her on the brief were *Patrick Morrissey*, Attorney General, *Thomas T. Lampman*, Assistant Solicitors General, *Thomas A. Lorenzen*, *Elizabeth B. Dawson*, *Rae Cronmiller*, *Kevin G. Clarkson*, Attorney General at the time the brief was filed, Office of the Attorney General for the State of Alaska, *Clyde Sniffen Jr.*, Attorney General, *Leslie Rutledge*, Attorney General, Office of the Attorney General for the State of Arkansas, *Nicholas J.*

Bronni, Solicitor General, *Vincent M. Wagner*, Deputy Solicitor General, *Dylan L. Jacobs*, Assistant Solicitor General, *Steve Marshall*, Attorney General, Office of the Attorney General for the State of Alabama, *Edmund G. LaCour, Jr.*, Solicitor General, *Christopher M. Carr*, Attorney General, Office of the Attorney General for the State of Georgia, *Andrew A. Pinson*, Solicitor General, *Derek Schmidt*, Attorney General, Office of the Attorney General for the State of Kansas, *Jeffrey A. Chanay*, Chief Deputy Attorney General, *Curtis T. Hill, Jr.*, Attorney General, Office of the Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, *Andrew Beshear*, Governor, Office of the Governor for the Commonwealth of Kentucky, *S. Travis Mayo*, Chief Deputy General Counsel, *Taylor Payne*, Deputy General Counsel, *Joseph A. Newberg*, Deputy General Counsel and Deputy Executive Director, *Jeff Landry*, Attorney General, Office of the Attorney General for the State of Louisiana, *Elizabeth B. Murrill*, Solicitor General, *Harry J. Vorhoff*, Assistant Attorney General, *Eric S. Schmitt*, Attorney General, Office of the Attorney General for the State of Missouri, *D. John Sauer*, Solicitor General, *Julie Marie Blake*, Deputy Solicitor General, *Timothy C. Fox*, Attorney General at the time the brief was filed, Office of the Attorney General for the State of Montana, *Matthew T. Cochenour*, Deputy Solicitor General, *Wayne Stenehjem*, Attorney General, Office of the Attorney General for the State of North Dakota, *Paul M. Seby*, Special Assistant Attorney General, *Douglas J. Peterson*, Attorney General, Office of the Attorney General for the State of Nebraska, *Justin D. Lavene*, Assistant Attorney General, *Dave Yost*, Attorney General, Office of the Attorney General of the State of Ohio, *Benjamin M. Flowers*, Solicitor General, *Cameron F. Simmons*, Principal Assistant Attorney General, *Mike Hunter*, Attorney General, Office of the Attorney General for the State of Oklahoma, *Mithun Mansinghani*, Solicitor General, *Jason R. Ravnsborg*, Attorney General, Office of the Attorney

General for the State of South Dakota, *Steven R. Blair*, Assistant Attorney General, *Alan Wilson*, Attorney General, Office of the Attorney General for the State of South Carolina, *James Emory Smith, Jr.*, Deputy Solicitor General, *Ken Paxton*, Attorney General, Office of the Attorney General for the State of Texas, *Kyle D. Hawkins*, Solicitor General, *Sean Reyes*, Attorney General, Office of the Attorney General for the State of Utah, *Tyler R. Green*, Solicitor General, *Bridget Hill*, Attorney General, Office of the Attorney General for the State of Wyoming, *James Kaste*, Deputy Attorney General, *Todd E. Palmer*, *William D. Booth*, *Obianuju Okasi*, *Carroll W. McGuffey, III*, *Misha Tseytlin*, *C. Grady Moore, III*, *Julia Barber*, *F. William Brownell*, *Elbert Lin*, *Allison D. Wood*, *Scott A. Keller*, *Jeffrey H. Wood*, *Jeremy Evan Maltz*, *Steven P. Lehotsky*, *Michael B. Schon*, *Emily Church Schilling*, *Kristina R. Van Bockern*, *David M. Flannery*, *Kathy G. Beckett*, *Edward L. Kropp*, *Amy M. Smith*, *Janet J. Henry*, *Melissa Horne*, *Angela Jean Levin*, *Eugene M. Trisko*, *John A. Rego*, *Reed W. Sirak*, *Michael A. Zody*, *Jacob Santini*, *Robert D. Cheren*, *Mark W. DeLaquil*, and *Andrew M. Grossman*. *C. Frederick Beckner, III*, *James R. Bedell*, *Margaret C. Campbell*, *Erik D. Lange*, and *John D. Lazzaretti* entered an appearance.

James P. Duffy argued the cause for Public Health and Environmental Intervenors in support of respondents. With him on the brief were *Ann Brewster Weeks*, *Sean H. Donahue*, *Susannah L. Weaver*, *Joanne Spalding*, *Andres Restrepo*, *Vera Pardee*, *Clare Lakewood*, *Elizabeth Jones*, *Brittany E. Wright*, *Jon A. Mueller*, *David Doniger*, *Benjamin Longstreth*, *Melissa J. Lynch*, *Lucas May*, *Vickie L. Patton*, *Tomas Carbonell*, *Benjamin Levitan*, *Howard Learner*, and *Scott Strand*.

Letitia James, Attorney General, Office of the Attorney General for the State of New York, *Michael J. Myers*, Senior Counsel, *Brian Lusignan*, Assistant Attorney General of

Counsel, *Barbara D. Underwood*, Solicitor General, *Steven C. Wu*, Deputy Solicitor General, *Matthew W. Grieco*, Assistant Solicitor General, *Xavier Becerra*, Attorney General, Office of the Attorney General for the State of California, *Robert W. Byrne*, Senior Assistant Attorney General, *David A. Zonana*, Supervising Deputy Attorney General, *Jonathan A. Wiener*, *M. Elaine Meckenstock*, *Timothy E. Sullivan*, *Elizabeth B. Rumsey*, and *Theodore A.B. McCombs*, Deputy Attorneys General, *William Tong*, Attorney General, Office of the Attorney General for the State of Connecticut, *Matthew I. Levine* and *Scott N. Koschwitz*, Assistant Attorneys General, *Kathleen Jennings*, Attorney General, Office of the Attorney General for the State of Delaware, *Valerie S. Edge*, Deputy Attorney General, *Philip J. Weiser*, Attorney General, Office of the Attorney General for the State of Colorado, *Eric R. Olson*, Solicitor General, *Robyn L. Wille*, Senior Assistant Attorney General, *Clare E. Connors*, Attorney General, Office of the Attorney General for the State of Hawaii, *William F. Cooper*, Deputy Attorney General, *Aaron M. Frey*, Attorney General, Office of the Attorney General for the State of Maine, *Laura E. Jensen*, Assistant Attorney General, *Brian E. Frosh*, Attorney General, Office of the Attorney General for the State of Maryland, *John B. Howard, Jr.*, *Joshua M. Segal*, and *Steven J. Goldstein*, Special Assistant Attorneys General, *Maura Healey*, Attorney General, Office of the Attorney General for the Commonwealth of Massachusetts, *Melissa A. Hoffer* and *Christophe Courchesne*, Assistant Attorneys General, *Megan M. Herzog* and *David S. Frankel*, Special Assistant Attorneys General, *Dana Nessel*, Attorney General, Office of the Attorney General for the State of Michigan, *Gillian E. Wener*, Assistant Attorney General, *Keith Ellison*, Attorney General, Office of the Attorney General for the State of Minnesota, *Peter N. Surdo*, Special Assistant Attorney General, *Aaron D. Ford*, Attorney General, Office of the Attorney General for the State of Nevada, *Heidi Parry Stern*, Solicitor General, *Gurbir*

S. Grewal, Attorney General, Office of the Attorney General for the State of New Jersey, *Lisa J. Morelli*, Deputy Attorney General, *Hector Balderas*, Attorney General, Office of the Attorney General for the State of New Mexico, *Tania Maestas*, Chief Deputy Attorney General, *Joshua H. Stein*, Attorney General, Office of the Attorney General for the State of North Carolina, *Asher Spiller*, Assistant Attorney General, *Ellen F. Rosenblum*, Attorney General, Office of the Attorney General for the State of Oregon, *Paul Garrahan*, Attorney-in-Charge, *Steve Novick*, Special Assistant Attorney General, *Josh Shapiro*, Attorney General, Office of the Attorney General for the Commonwealth of Pennsylvania, *Ann R. Johnston*, Senior Deputy Attorney General, *Aimee D. Thomson*, Deputy Attorney General, *Peter F. Neronha*, Attorney General, Office of the Attorney General for the State of Rhode Island, *Gregory S. Schultz*, Special Assistant Attorney General, *Thomas J. Donovan, Jr.*, Attorney General, Office of the Attorney General for the State of Vermont, *Nicholas F. Persampieri*, Assistant Attorney General, *Mark Herring*, Attorney General, Office of the Attorney General for the Commonwealth of Virginia, *Donald D. Anderson*, Deputy Attorney General, *Paul Kugelman, Jr.*, Senior Assistant Attorney General and Chief, Environmental Section, *Caitlin Colleen Graham O'Dwyer*, Assistant Attorney General, *Robert W. Ferguson*, Attorney General, Office of the Attorney General for the State of Washington, *Christopher H. Reitz* and *Emily C. Nelson*, Assistant Attorneys General, *Karl A. Racine*, Attorney General, Office of the Attorney General for the District of Columbia, *Loren L. AliKhan*, Solicitor General, *Tom Carr*, City Attorney, Office of the City Attorney for the City of Boulder, *Debra S. Kalish*, Senior Counsel, *Mark A. Flessner*, Corporation Counsel, Office of the Corporation Counsel for the City of Chicago, *Benna Ruth Solomon*, Deputy Corporation Counsel, *Jared Policicchio*, Supervising Assistant Corporation Counsel, *Kristin M. Bronson*, City Attorney, Office of the City

Attorney for the City and County of Denver, *Lindsay S. Carder* and *Edward J. Gorman*, Assistant City Attorneys, *Michael N. Feuer*, City Attorney, Office of the City Attorney for the City of Los Angeles, *Michael J. Bostrom*, Assistant City Attorney, *James E. Johnson*, Corporation Counsel, New York City Law Department, *Christopher G. King*, Senior Counsel, *Marcel S. Pratt*, City Solicitor, City of Philadelphia Law Department, *Scott J. Schwarz* and *Patrick K. O'Neill*, Divisional Deputy City Solicitors, and *Thomas F. Pepe*, City Attorney, City of South Miami were on the brief for the State and Municipal Intervenor in support of respondents. *Jeremiah Langston*, Assistant Attorney General, Office of the Attorney General for the State of Montana, *Stephen C. Meredith*, Solicitor, Office of the Attorney General for the Commonwealth of Kentucky, *Margaret I. Olson*, Assistant Attorney General, Office of the Attorney General for the State of North Dakota, and *Erik E. Petersen*, Assistant Attorney General, Office of the Attorney General for the State of Wyoming, and *Robert A. Wolf* entered appearances.

Patrick Morrissey, Attorney General, Office of the Attorney General for the State of West Virginia, *Lindsay S. See*, Solicitor General, *Thomas T. Lampman*, Assistant Solicitor General, *Scott A. Keller*, *Jeffrey H. Wood*, *Jeremy Evan Maltz*, *Steven P. Lehotsky*, *Michael B. Schon*, *Thomas A. Lorenzen*, *Elizabeth B. Dawson*, *Rae Cronmiller*, *Steve Marshall*, Attorney General, Office of the Attorney General for the State of Alabama, *Edmund G. LaCour, Jr.*, Solicitor General, *Kevin G. Clarkson*, Attorney General, Office of the Attorney General for the State of Alaska at the time the brief was filed, *Clyde Sniffen, Jr.*, Attorney General, *Leslie Rutledge*, Attorney General, Office of the Attorney General for the State of Arkansas, *Nicholas J. Bronni*, Solicitor General, *Vincent M. Wagner*, Deputy Solicitor General, *Dylan L. Jacobs*, Assistant Solicitor General, *Christopher M. Carr*, Attorney General,

Office of the Attorney General for the State of Georgia, *Andrew A. Pinson*, Solicitor General, *Derek Schmidt*, Attorney General, Office of the Attorney General for the State of Kansas, *Jeffrey A. Chanay*, Chief Deputy Attorney General, *Curtis T. Hill, Jr.*, Attorney General, Office of the Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, *Andrew Beshear*, Governor, Office of the Governor for the Commonwealth of Kentucky, *S. Travis Mayo*, Chief Deputy General Counsel, *Taylor Payne*, Deputy General Counsel, *Joseph A. Newberg*, Deputy General Counsel and Deputy Executive Director, *Jeff Landry*, Attorney General, Office of the Attorney General for the State of Louisiana, *Elizabeth B. Murrill*, Solicitor General, *Harry J. Vorhoff*, Assistant Attorney General, *Eric S. Schmitt*, Attorney General, Office of the Attorney General for the State of Missouri, *D. John Sauer*, Solicitor General, *Julie Marie Blake*, Deputy Solicitor General, *Timothy C. Fox*, Attorney General at the time the brief was filed, Office of the Attorney General for the State of Montana, *Matthew T. Cochenour*, Deputy Solicitor General, *Wayne Stenehjem*, Attorney General, Office of the Attorney General for the State of North Dakota, *Paul M. Seby*, Special Assistant Attorney General, *Douglas J. Peterson*, Attorney General, Office of the Attorney General for the State of Nebraska, *Justin D. Lavene*, Assistant Attorney General, *Dave Yost*, Attorney General, Office of the Attorney General of the State of Ohio, *Benjamin M. Flowers*, Solicitor General, *Cameron F. Simmons*, Principal Assistant Attorney General, *Mike Hunter*, Attorney General, Office of the Attorney General for the State of Oklahoma, *Mithun Mansinghani*, Solicitor General, *Jason R. Ravnsborg*, Attorney General, Office of the Attorney General for the State of South Dakota, *Steven R. Blair*, Assistant Attorney General, *Alan Wilson*, Attorney General, Office of the Attorney General for the State of South Carolina, *James Emory Smith, Jr.*, Deputy Solicitor General, *Ken Paxton*, Attorney General, Office of the Attorney General for

the State of Texas, *Kyle D. Hawkins*, Solicitor General, *Sean Reyes*, Attorney General, Office of the Attorney General for the State of Utah, *Tyler R. Green*, Solicitor General, *Bridget Hill*, Attorney General, Office of the Attorney General for the State of Wyoming, *James Kaste*, Deputy Attorney General, *Todd E. Palmer*, *William D. Booth*, *Obianuju Okasi*, *Carroll W. McGuffey, III*, *Misha Tseytlin*, *C. Grady Moore, III*, *Julia Barber*, *F. William Brownell*, *Elbert Lin*, *Allison D. Wood*, *Emily Church Schilling*, *Kristina R. Van Bockern*, *David M. Flannery*, *Kathy G. Beckett*, *Edward L. Kropp*, *Amy M. Smith*, *Janet J. Henry*, *Melissa Horne*, *Angela Jean Levin*, *Eugene M. Trisko*, *John A. Rego*, *Reed W. Sirak*, *Michael A. Zody*, *Jacob Santini*, *Robert D. Cheren*, *Mark W. DeLaquil*, and *Andrew M. Grossman* were on the brief for State and Industry Intervenors in support of respondents regarding Clean Power Plan Repeal.

Wayne Stenehjem, Attorney General, Office of the Attorney General for the State of North Dakota, and *Paul M. Seby*, Special Assistant Attorney General, were on the brief for intervenor State of North Dakota in support of the respondents. *Jerry Stouck* entered an appearance.

Thomas J. Ward, *Megan H. Berge*, and *Jared R. Wigginton* were on the brief for *amicus curiae* National Association of Builders in support of respondents.

Before: MILLETT, PILLARD, and WALKER, *Circuit Judges*.

Opinion for the Court filed PER CURIAM.

Opinion concurring in part, concurring in the judgment in part, and dissenting in part filed by *Circuit Judge WALKER*.

TABLE OF CONTENTS

I. Background.....	17
A. The Clean Air Act	17
B. Electricity and Climate Change	21
1. Electricity	21
2. Climate Change and the Federal Government	24
C. The Clean Power Plan	29
D. The ACE Rule	32
1. Repeal of the Clean Power Plan	32
2. Best System of Emission Reduction	33
3. Degree of Emission Limitation Achievable	36
4. Implementing Regulations.....	38
E. Petitions for Review	38
F. Jurisdiction and Standard of Review	39
II. Section 7411.....	40
A. Statutory Context.....	40
1. Text	46
2. Statutory History, Structure, and Purpose	59
3. Compliance Measures.....	71
B. The Major Questions Doctrine	74
1. The EPA's Regulatory Mandate	75
2. Best System of Emission Reduction	80
C. Federalism	92
III. The EPA's Authority to Regulate Carbon Dioxide Emissions Under Section 7411.....	98
A. The Coal Petitioners' Challenges.....	98
1. Endangerment Finding.....	99
2. Section 7411 and Section 7412's Parallel Operation.....	111
B. The Robinson Petitioners' Challenges	132
IV. Amendments to the Implementing Regulations	138
V. Vacatur and Remand	146
VI. Conclusion.....	147

As the Supreme Court recognized nearly fourteen years ago, climate change has been called “the most pressing environmental challenge of our time.” *Massachusetts v. EPA*, 549 U.S. 497, 505 (2007) (formatting modified). Soon thereafter, the United States government determined that greenhouse gas emissions are polluting our atmosphere and causing significant and harmful effects on the human environment. Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act (2009 Endangerment Finding), 74 Fed. Reg. 66,496, 66,497–66,499 (Dec. 15, 2009). And both Republican and Democratic administrations have agreed: Power plants burning fossil fuels like coal “are far and away” the largest stationary source of greenhouse gases and, indeed, their role in greenhouse gas emissions “dwarf[s] other categories[.]” EPA Br. 169; *see also* Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units (New Source Rule), 80 Fed. Reg. 64,510, 64,522 (Oct. 23, 2015) (fossil-fuel-fired power plants are “by far the largest emitters” of greenhouse gases).

The question in this case is whether the Environmental Protection Agency (EPA) acted lawfully in adopting the 2019 Affordable Clean Energy Rule (ACE Rule), 84 Fed. Reg. 32,520 (July 8, 2019), as a means of regulating power plants’ emissions of greenhouse gases. It did not. Although the EPA has the legal authority to adopt rules regulating those emissions, the central operative terms of the ACE Rule and the repeal of its predecessor rule, the Clean Power Plan, 80 Fed. Reg. 64,662 (Oct. 23, 2015), hinged on a fundamental misconstruction of Section 7411(d) of the Clean Air Act. In addition, the ACE Rule’s amendment of the regulatory framework to slow the process for reduction of emissions is arbitrary and capricious. For those reasons, the ACE Rule is

vacated, and the record is remanded to the EPA for further proceedings consistent with this opinion.

I. BACKGROUND

A. THE CLEAN AIR ACT

In 1963, Congress passed the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population[.]” *id.* § 7401(b)(1). Animating the Act was Congress’ finding that “growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles[] has resulted in mounting dangers to the public health and welfare[.]” *Id.* § 7401(a)(2).

Section 111 of the Clean Air Act, which was added in 1970 and codified at 42 U.S.C. § 7411, directs the EPA to regulate any new and existing stationary sources of air pollutants that “cause[], or contribute[] significantly to, air pollution” and that “may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7411(b)(1)(A); *see id.* § 7411(d), (f) (providing that the EPA Administrator “shall” regulate existing and new sources of air pollution). A “stationary source” is a source of air pollution that cannot move, such as a power plant. *See id.* § 7411(a)(3) (defining “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant[]”). An example of a common non-stationary source of air pollution is a gas-powered motor vehicle. *See Utility Air Regulatory Group v. EPA (UARG)*, 573 U.S. 302, 308 (2014).

Within 90 days of the enactment of Section 7411, the EPA Administrator was to promulgate a list of stationary source categories that “cause[], or contribute[] significantly to, air

pollution[.]” 42 U.S.C. § 7411(b)(1)(A). In 1971, the Administrator included fossil-fuel-fired steam-generating power plants on that list. Air Pollution Prevention and Control: List of Categories of Stationary Sources, 36 Fed. Reg. 5,931 (March 31, 1971); *see also* New Source Rule, 80 Fed. Reg. at 64,527–64,528. Today’s power plants fall in that same category. ACE Rule, 84 Fed. Reg. at 32,557 n.250.

Once a stationary source category is listed, the Administrator must promulgate federal “standards of performance” for all newly constructed sources in the category. 42 U.S.C. § 7411(b)(1)(B). The Act defines a “standard of performance” as

a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

Id. § 7411(a)(1).

Once such a new source regulation is promulgated, the Administrator also must issue emission guidelines for already-existing stationary sources within that same source category. 42 U.S.C. § 7411(d)(1)(A)(ii); *see also American Elec. Power Co., Inc. v. Connecticut (AEP)*, 564 U.S. 410, 424 (2011).

While the new source standards are promulgated and enforced entirely by the EPA, the Clean Air Act prescribes a process of cooperative federalism for the regulation of existing sources. Under that structure, the statute delineates three distinct regulatory steps involving three sets of actors—the

EPA, the States, and regulated industry—each of which has a flexible role in choosing how to comply. *See* 42 U.S.C. § 7411(a)(1), (d). This allows each State to work with the stationary sources within its jurisdiction to devise a plan for meeting the federally promulgated quantitative guideline for emissions. *See id.* § 7411(d).

The process starts with the EPA first applying its expertise to determine “the degree of emission limitation achievable through the application of the best system of emission reduction” that “has been adequately demonstrated.” 42 U.S.C. § 7411(a)(1); *see* 40 C.F.R. § 60.22a. That system must “tak[e] into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements[.]” 42 U.S.C. § 7411(a)(1). Once the Administrator identifies the best system of emission reduction, she then determines the amount of emission reduction that existing sources should be able to achieve based on the application of that system and adopts corresponding emission guidelines. *Id.*; *see also, e.g.*, ACE Rule, 84 Fed. Reg. at 32,523; Clean Power Plan, 80 Fed. Reg. at 64,719.

Each State then submits to the EPA a plan that (i) establishes standards of performance for that State’s existing stationary sources’ air pollutants (excepting pollutants already subject to separate federal emissions standards), and (ii) “provides for the implementation and enforcement of such standards of performance[.]” by the State. 42 U.S.C. § 7411(d)(1); *see* 40 C.F.R. § 60.23a. The standards of performance must “reflect[.]” the emission targets that the EPA has determined are achievable. 42 U.S.C. § 7411(a)(1). In this context, a state standard need not adopt the best system identified by the EPA to “reflect[.]” it. *Id.*; *see* 40 C.F.R. § 60.24a(c). Instead, the Clean Air Act affords States significant flexibility in designing and enforcing standards that

employ other approaches so long as they meet the emission guidelines prescribed by the Agency.

If a State fails to submit a satisfactory plan, the EPA may prescribe a plan for that State. 42 U.S.C. § 7411(d)(2)(A); *see* 40 C.F.R. § 60.27a(c)-(e). Similarly, if the State submits a plan but fails to enforce it, the EPA itself may enforce the plan's terms. *Id.* § 7411(d)(2)(B).

The third and final set of relevant actors are the regulated entities themselves, to which, under the Act, the States may afford leeway in crafting compliance measures. *See* Clean Power Plan, 80 Fed. Reg. at 64,666; ACE Rule, 84 Fed. Reg. at 32,555.

The EPA has exercised its authority under Section 7411 over the years to set emission limitations for different types of air pollution from various categories of existing sources. *See* 42 Fed. Reg. 12,022 (March 1, 1977) (fluorides from phosphate fertilizer plants); 42 Fed. Reg. 55,796 (Oct. 18, 1977) (acid mist from sulfuric acid plants); 44 Fed. Reg. 29,828 (May 22, 1979) (total reduced sulfur from kraft pulp plants); 45 Fed. Reg. 26,294 (April 17, 1980) (fluorides from primary aluminum plants); 60 Fed. Reg. 65,387 (Dec. 19, 1995) (various pollutants from municipal waste combustors); 61 Fed. Reg. 9905 (March 12, 1996) (landfill gases from municipal solid waste landfills); 70 Fed. Reg. 28,606 (May 18, 2005) (mercury from coal-fired power plants).

The Clean Air Act is a comprehensive statute that includes a variety of regulatory programs for tackling air pollution in addition to Section 7411. Regulated parties may be subject to one or more programs. As relevant here, the National Ambient Air Quality Standards (NAAQS) provisions, 42 U.S.C. §§ 7408–7410, govern the levels of specified air pollutants that may be present in the atmosphere to protect air quality and the

public health and welfare. The Hazardous Air Pollutants program, *id.* § 7412, directs the EPA to establish strict emission limitations for the most dangerous air pollutants emitted from major sources. Section 7411's cooperative federalism program for existing sources operates as a gap-filler, requiring the EPA to regulate harmful emissions not controlled under those other two programs. *Id.* § 7411(d)(1)(i).

B. ELECTRICITY AND CLIMATE CHANGE

1. Electricity

Electricity powers the world. Chances are that you are reading this opinion on a device that consumes electricity. Yet two distinct characteristics of electricity make its production and delivery in the massive quantities demanded by consumers an exceptionally complex process. First, unlike most products, electricity is a perfectly fungible commodity. Grid Experts Amicus Br. 6. A watt of electricity is a watt of electricity, no matter who makes it, how they make it, or where it is purchased. Second, at least as of now, this highly demanded product cannot be effectively stored at scale after it is created. Paul L. Joskow, *Creating a Smarter U.S. Electricity Grid*, 26 J. ECON. PERSP. 29, 31–33 (2012).¹ Instead, electricity must

¹ Change in storage capacity is picking up speed. *See generally* Richard L. Revesz & Burcin Unel, *Managing the Future of the Electricity Grid: Energy Storage and Greenhouse Gas Emissions*, 42 HARV. ENV'T L. REV. 139, 140–141 (2018) (describing ongoing declines in cost of storage); LAZARD, LAZARD'S LEVELIZED COST OF STORAGE ANALYSIS—VERSION 6.0 (2020) (noting “storage costs have declined across most use cases and technologies, particularly for shorter-duration applications, in part driven by evolving preferences in the industry”). Nevertheless, the grid's production capacity still far exceeds its present storage capacity. Univ. of Mich.

constantly be produced, and is almost instantaneously consumed. *See* Clean Power Plan, 80 Fed. Reg. at 64,677, 64,692; Grid Experts Amicus Br. 8.

Those unique attributes led to the creation of the American electrical grid.² The grid has been called the “supreme engineering achievement of the 20th century,” MASS. INST. OF TECH., *THE FUTURE OF THE ELECTRIC GRID* 1 (2011) (formatting modified), and it is an exceptionally complex, interconnected system. “[A]ny electricity that enters the grid immediately becomes a part of a vast pool of energy that is constantly moving[.]” *New York v. FERC*, 535 U.S. 1, 7 (2002). That means that units of electricity as delivered to the user are identical, no matter their source. On the grid, there is no coal-generated electricity or renewable-generated electricity; there is just electricity. *See* Clean Power Plan, 80 Fed. Reg. at 64,692; Grid Experts Amicus Br. 7–8. Also, because storing electricity for any length of time remains technically challenging and often costly, the components of the grid must operate as a perfectly calibrated machine to deliver the amount of electricity that all consumers across the United States need at the moment they need it. Grid Experts Amicus

Ctr. for Sustainable Sys., U.S. GRID ENERGY STORAGE (Sept. 2020), http://css.umich.edu/sites/default/files/US%20Grid%20Energy%20Storage_CSS15-17_e2020.pdf (last visited Jan. 11, 2021) (United States has 1,100 gigawatts of installed generation capacity and just 23 gigawatts of storage capacity).

² Technically, “grids.” There are three regional grids in the contiguous United States: Eastern, Western, and Texas. Grid Experts Amicus Br. 9; *see also* United States Dep’t of Energy, *North American Electric Reliability Corporation Interconnections*, <https://www.energy.gov/oe/downloads/north-american-electric-reliability-corporation-interconnections> (last visited Jan. 11, 2021).

Br. 8, 10–11; *see also* 80 Fed. Reg. at 64,677. “If [someone] in Atlanta on the Georgia [leg of the] system turns on a light, every generator on Florida’s system almost instantly is caused to produce some quantity of additional electric energy which serves to maintain the balance in the interconnected system[.]” *Federal Power Comm’n v. Florida Power & Light Co.*, 404 U.S. 453, 460 (1972) (citation omitted). “Like orchestra conductors signaling entrances and cut-offs, grid operators use automated systems to signal particular generators to dispatch more or less power to the grid as needed over the course of the day, thus ensuring that power pooled on the grid rises and falls to meet changing demand.” Grid Experts Amicus Br. 11.

Most generators of electricity on the American grid create power by burning fossil fuels like coal, oil, and natural gas. *See* United States Energy Information Administration (EIA), *Frequently Asked Questions: What Is U.S. Electricity Generation by Energy Source?* (Nov. 2, 2020), <https://www.eia.gov/tools/faqs/faq.php?id=427&t=3> (last visited Jan. 11, 2021) (fossil fuels represented 62.6 percent of electricity generation in 2019). Some of those power plants take a fossil fuel (usually coal) and burn it in a water boiler to make steam. Other power plants take a different fossil fuel (usually natural gas), mix it with highly compressed air, and ignite it to release a combination of super-hot gases. Either way, that steam or superheated mixture is piped into giant turbines that catch the gases and rotate at extreme speeds. Those turbines turn generators, which spin magnets within wire coils to produce electricity. EIA, *Electricity Explained* (Nov. 9, 2020), <https://www.eia.gov/energyexplained/electricity/how-electricity-is-generated.php> (last visited Jan 11, 2021).

2. Climate Change and the Federal Government

Electrical power has become virtually as indispensable to modern life as air itself. But electricity generation has come into conflict with air quality in ways that threaten human health and well-being when power generated by burning fossil fuels emits carbon dioxide and other polluting greenhouse gases into the air.

Since the late 1970s, the federal government has focused “serious attention” on the effects of carbon dioxide pollution on the climate. *Massachusetts v. EPA*, 549 U.S. at 507. In 1978, Congress adopted the National Climate Program Act, Pub. L. No. 95-367, 92 Stat. 601, which directed the President to study and devise an appropriate response to “man-induced climate processes and their implications[.]” *id.* § 3; see *Massachusetts v. EPA*, 549 U.S. at 507–508. In response, the National Academy of Sciences’ National Research Council reported “no reason to doubt that climate changes will result” if “carbon dioxide continues to increase,” and “[a] wait-and-see policy may mean waiting until it is too late.” *Massachusetts v. EPA*, 549 U.S. at 508 (quoting CLIMATE RESEARCH BOARD, CARBON DIOXIDE & CLIMATE: A SCIENTIFIC ASSESSMENT, at viii (1979)).

In 1987, Congress passed the Global Climate Protection Act, which found that “manmade pollution[.]” including “the release of carbon dioxide, * * * may be producing a long-term and substantial increase in the average temperature on Earth[.]” Pub. L. No. 100-204, Title XI, § 1102(1), 101 Stat. 1407, 1408 (codified at 15 U.S.C. § 2901 note). The Climate Protection Act directed the EPA to formulate a “coordinated national policy on global climate change.” *Id.* § 1103(b), 101 Stat. at 1408; see *Massachusetts v. EPA*, 549 U.S. at 508.

It was not until the Supreme Court's 2007 decision in *Massachusetts v. EPA*, however, that the Court confirmed that carbon dioxide and other greenhouse gas emissions constituted "air pollutant[s]" covered by the Clean Air Act. *See* 549 U.S. at 528. The Supreme Court explained that the Clean Air Act's "sweeping definition of 'air pollutant' includes 'any air pollution agent or combination of such agents, including any physical, chemical . . . substance or matter which is emitted into or otherwise enters the ambient air[.]'" *Id.* at 528–529 (quoting 42 U.S.C. § 7602(g)). The Act, the Supreme Court held, "is unambiguous" in that regard. *Id.* at 529. "On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word 'any.'" *Id.* And "[c]arbon dioxide" and other common greenhouse gases are "without a doubt" chemical substances that are "emitted into . . . the ambient air." *Id.* (quoting 42 U.S.C. § 7602(g)).

Given that statutory command, the Supreme Court ruled that the EPA "can avoid taking further action" to regulate such pollution "only if it determines that greenhouse gases do not contribute to climate change" or offers some reasonable explanation for not resolving that question. *Massachusetts v. EPA*, 549 U.S. at 533.

Taking up the mantle, the EPA in 2009 found "compelling[]" evidence that emissions of greenhouse gases are polluting the atmosphere and are endangering human health and welfare by causing significant damage to the environment. 2009 Endangerment Finding, 74 Fed. Reg. at 66,497; *see id.* ("[T]he Administrator finds that greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare. * * * The Administrator has determined that the body of scientific evidence compellingly supports this finding."); *id.* at 66,497–

66,499. The EPA concluded that “‘compelling’ evidence supported the ‘attribution of observed climate change to anthropogenic’ [that is, human-influenced] emissions of greenhouse gases[.]” *AEP*, 564 U.S. at 417 (quoting 74 Fed. Reg. at 66,518). The “[c]onsequent dangers of greenhouse gas emissions,” the EPA determined, include

increases in heat-related deaths; coastal inundation and erosion caused by melting icecaps and rising sea levels; more frequent and intense hurricanes, floods, and other “extreme weather events” that cause death and destroy infrastructure; drought due to reductions in mountain snowpack and shifting precipitation patterns; destruction of ecosystems supporting animals and plants; and potentially “significant disruptions” of food production.

Id. (quoting 74 Fed. Reg. at 66,524–66,535).

Not long thereafter, the Supreme Court ruled that the significant greenhouse gas pollution caused by fossil-fuel-fired power plants is subject to regulation under Section 7411 of the Clean Air Act. *AEP*, 564 U.S. at 424 (holding that Section 7411 “speaks directly to emissions of carbon dioxide from [fossil-fuel-fired] plants[.]”) (internal quotation marks omitted). The Court concluded that the EPA’s expertise made it “best suited to serve as primary regulator of greenhouse gas emissions.” *Id.* at 428.

In 2015, with the 2009 carbon dioxide endangerment finding continuing in effect, the EPA reaffirmed that greenhouse gases “endanger public health, now and in the future.” New Source Rule, 80 Fed. Reg. at 64,518. The EPA explained that, “[b]y raising average temperatures, climate change increases the likelihood of heat waves, which are associated with increased deaths and illnesses[.]” particularly

among “[c]hildren, the elderly, and the poor[.]” *Id.* at 64,517. In addition, the EPA found that “[c]limate change impacts touch nearly every aspect of public welfare.” *Id.* Among the “multiple threats caused by human emissions of [greenhouse gases],” the EPA pointed to climate changes that “are expected to place large areas of the country at serious risk of reduced water supplies, increased water pollution, and increased occurrence of extreme events such as floods and droughts.” *Id.* The EPA “emphasize[d] the urgency of reducing [greenhouse gas] emissions due to * * * projections that show [greenhouse gas] concentrations climbing to ever-increasing levels in the absence of mitigation[.]” citing independent assessments finding that, “without a reduction in emissions, CO₂ concentrations by the end of the century would increase to levels that the Earth has not experienced for more than 30 million years.” *Id.* at 64,518.

The federal government’s consistent recognition of the danger to public health and welfare caused by climate change, and the signal contribution of greenhouse gas emissions from power plants to global warming, continues to the present. In 2018, President Trump’s administration concluded that “Earth’s climate is now changing faster than at any point in the history of modern civilization, primarily as a result of human activities.” U.S. GLOBAL CHANGE RESEARCH PROGRAM, FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME II: IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES (REPORT-IN-BRIEF) 24 (2018). The administration added that “the evidence of human-caused climate change is overwhelming and continues to strengthen,” and “the impacts of climate change are intensifying across the country[.]” *Id.* at 26 (emphasis omitted). “Climate-related changes in weather patterns and associated changes in air, water, food, and the environment are affecting the health and well-being of the American people, causing injuries, illnesses, and death.” *Id.* at

102. The administration's report concluded that urgent action is needed to mitigate these dangers because "[f]uture risks from climate change depend primarily on decisions made today." *Id.* at 13.

In preparing the ACE Rule, the EPA expressly acknowledged its continued adherence to the 2015 endangerment finding. 84 Fed. Reg. at 32,533 (The 2015 New Source Rule "continues to provide the requisite predicate for applicability of [Clean Air Act] section 111(d)."); *id.* at 32,557 n.250; *see also* Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program: Proposed Rule, 83 Fed. Reg. 44,746, 44,751 (Aug. 31, 2018) (confirming that the 2015 New Source Rule "remains on the books[]"); EPA Br. 217.

That endangerment finding provided the essential factual foundation—and triggered a statutory mandate—for the EPA to regulate greenhouse gas emissions from both new and existing power plants. *See* New Source Rule, 80 Fed. Reg. at 64,527, 64,529–64,532; Clean Power Plan, 80 Fed. Reg. at 64,683–64,690; *see also* 42 U.S.C. §§ 7411(b)(1)(A)–(B) (duty to regulate new stationary sources that contribute significantly to dangerous pollution identified in endangerment finding), 7411(d)(1)(A)(ii) (duty to regulate existing stationary sources that would be regulated under § 7411(b) if they were new stationary sources). Recall, Section 7411(b)(1)(A) provides that the EPA Administrator "shall" regulate any category of sources that, "in his judgment * * * causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA endangerment findings reflect such well-established risks.

C. THE CLEAN POWER PLAN

In the last decade, the EPA has heavily focused its regulation of greenhouse gases on the power sector because “power plants are far and away the largest stationary-category source of greenhouse gases[,]” and “power plants’ contributions to CO₂ pollution *** dwarf[] other categories[.]” EPA Br. 169.

In October 2015, the EPA issued greenhouse gas emission standards for new and modified power plants. *See* New Source Rule, 80 Fed. Reg. at 64,510. In so doing, the EPA found that, “[a]ll told, these fossil fuel-fired [power plants] emit almost one-third of all U.S. [greenhouse gas] emissions, and are responsible for almost three times as much as the emissions from the next ten stationary source categories combined.” *Id.* at 64,531. That rule and finding remain in effect and are not challenged in this litigation.

The EPA then turned to the regulation of existing power plants. The EPA began, as the Clean Air Act requires, by determining the best system of emission reduction that has been adequately demonstrated for existing fossil-fuel-fired power plants. *See* 42 U.S.C. § 7411(a)(1); Clean Power Plan, 80 Fed. Reg. at 64,718. In identifying that system, the EPA chose to build on the established grid system and methods of operation already adopted by and familiar to the power sector. *See* 80 Fed. Reg. at 64,725, 64,727–64,728. The regulations and standards that the EPA formulated came to be known as the Clean Power Plan. *Id.* at 64,663.

In the Clean Power Plan, the EPA determined that a combination of three existing methods of emission reduction—which the Plan referred to as building blocks, 80 Fed. Reg. at 64,667—formed the “best system of emission reduction,” 42 U.S.C. § 7411(a)(1).

First, the system incorporated heat-rate improvements—that is, technological measures that improve efficiency at coal-fired steam power plants and, in that way, reduce the amount of coal that must be burned to produce each watt of electricity to the grid. 80 Fed. Reg. at 64,667.

Second, the system added the “substitut[ion of] increased generation from lower-emitting existing natural gas combined cycle units for generation from higher-emitting affected steam generating” power plants, which are mostly coal-fired. 80 Fed. Reg. at 64,667.

Third, the system prioritized the use of electricity generated from zero-emitting renewable-energy sources over electricity from the heavily greenhouse-gas-polluting fossil-fuel-fired power plants. 80 Fed. Reg. at 64,667.

Those second and third methods of emission control are often referred to as “generation shifting” because the reductions occur when the source of power generation shifts from higher-emission power plants to less-polluting sources of energy. *See* Clean Power Plan, 80 Fed. Reg. at 64,728–64,729. As the EPA observed, such shifts in generation already occur all the time as a matter of grid mechanics. That is, within the grid’s “Constrained Least-Cost Dispatch” system, production from “generators with the lowest variable costs” will be dispatched “first, as system operational limits allow, until all demand is satisfied.” Grid Experts Amicus Br. 12. “[R]enewable energy generators typically receive dispatch priority because they have lower variable costs than fossil-fuel-fired generators, which must purchase fuel.” *Id.* at 13 (citing 80 Fed. Reg. at 64,693). The EPA found that most electricity is generated by diversified utilities that could achieve most or all of the shift to lower- or no-emission generation by

reassessing the dispatch priority of their own assets. *See* 80 Fed. Reg. at 64,796, 64,804.

As required by Section 7411(a)(1), the EPA then quantified the degree of emission reduction achievable under that three-tier best system for the relevant fossil-fuel-fired power plants and translated it into state-specific emissions goals for 2030. Clean Power Plan, 80 Fed. Reg. at 64,824–64,825. To permit additional flexibility, the Plan actually provided two alternative types of targets: rate-based goals, reflecting the rate of emission per certain amount of generation, and mass-based goals, reflecting the total emission from a State's sources. *Id.* at 64,820, 64,824–64,825 Tables 12, 13. The alternative metrics were an added source of flexibility for States in choosing how they would meet the federal limits.

Under the Clean Air Act, States could then propose plans that set standards of performance for their existing power plants that would meet those emission goals. Clean Power Plan, 80 Fed. Reg. at 64,664. In doing so, the States and their power plants were under no obligation to use the three specific methods that the EPA had identified in determining the best system of emission reduction. Rather, consistent with Section 7411(d)'s cooperative federalism approach, States were free to choose any measures, approaches, or technologies that they deemed appropriate to meet the federal guidelines. For example, they could adopt technological controls already in use by some power plants like carbon capture and sequestration (by which carbon dioxide is captured from the plant's flue gas before it is emitted and then securely stored so it cannot reach the atmosphere) or co-firing (where fuels that release less carbon dioxide are burned alongside fuels that release more to reduce the amount of the latter used). *See id.* at 64,883. The EPA also suggested that States might rely on emissions-trading

programs (often referred to as cap-and-trade) and other potential compliance strategies. *Id.* at 64,887.

The EPA found that its proposed approach was “consistent with, and in some ways mirrors, the interconnected, interdependent and highly regulated nature of the utility power sector[]” and its grid, as well as “the daily operation of affected [power plants] within this framework, and the critical role of utilities in providing reliable, affordable electricity at all times and in all places within this complex, regulated system.” Clean Power Plan, 80 Fed. Reg. at 64,678.

The Clean Power Plan was challenged in this court. *West Virginia v. EPA*, No. 15-1363 (and consolidated cases) (D.C. Cir. Oct. 23, 2015). After we heard argument *en banc*, but before we issued a decision, that litigation was held in abeyance and ultimately dismissed as the EPA reassessed its position. No. 15-1363, Docs. 1673071, 1806952.

D. THE ACE RULE

In 2019, the EPA issued a new rule that repealed and replaced the Clean Power Plan: The Affordable Clean Energy (ACE) Rule. *See* Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, 84 Fed. Reg. 32,520 (July 8, 2019). That Rule is the subject of this litigation.

1. Repeal of the Clean Power Plan

At the outset, the ACE Rule repealed the Clean Power Plan. The EPA explained that it felt itself statutorily compelled to do so because, in its view, “the plain meaning” of Section 7411(d) “unambiguously” limits the best system of emission reduction to only those measures “that can be put into operation

at a building, structure, facility, or installation.” ACE Rule, 84 Fed. Reg. at 32,523–32,524. Because the Clean Power Plan’s best system was determined by using some emission control measures that the EPA characterized as physically operating off the site of coal-fired power plants—such as some forms of generation shifting and emissions trading—the EPA concluded that it had no choice but to repeal the Plan. *Id.* The EPA emphasized “that [its] action is based on the only permissible reading of the statute and [it] would reach that conclusion even without consideration of the major question doctrine,” while adding that application of that latter doctrine “confirms the unambiguously expressed intent” of Section 7411. *Id.* at 32,529.

2. Best System of Emission Reduction

Considering its authority under Section 7411 to be confined to physical changes to the power plants themselves, the EPA’s ACE Rule determined a new best system of emission reduction for coal-fired power plants only. The EPA left unaddressed in this rulemaking (or elsewhere) greenhouse gas emissions from other types of fossil-fuel-fired power plants, such as those fired by natural gas or oil. ACE Rule, 84 Fed. Reg. at 32,533.

The EPA’s proposed system relied solely on heat-rate improvement technologies and practices that could be applied at and to existing coal-fired power plants. ACE Rule, 84 Fed. Reg. at 32,525, 32,537. The EPA selected only seven heat-rate improvement techniques as components of its best system. *Id.* at 32,537. Six of those measures were new-to-the-plant technologies or “equipment upgrades.” *Id.* at 32,536–32,537 (naming as part of the best system (1) adding or upgrading neural networks and intelligent sootblowers; (2) upgrading boiler feed pumps; (3) replacing or upgrading air heater and

duct leakage control devices; (4) adding variable frequency drives in feed pumps and induced-draft fans; (5) blade path upgrades; and (6) redesigning or replacing economizers). The seventh measure was the use of “best operating and maintenance practices” implementing heat-rate improvement techniques. *Id.* at 32,537, 32,540. The EPA limited itself to techniques that could be “applied broadly” to the Nation’s coal-fired plants, which primarily amounted to upgrades to existing equipment. *Id.* at 32,536.

The EPA explained that only five of the seven listed techniques directly reduce the heat rate of power plants. *See* ACE Rule, 84 Fed. Reg. at 32,538–32,540. The other two techniques—replacing or upgrading the boiler feed pump and installing variable frequency drives—serve to reduce the amount of energy that a power plant must use to run its own general operations. *Id.* at 32,538–32,539.³ So those two techniques do not make a power plant more efficient in turning coal into power, but instead allow power plants to dispatch more of the power they produce to the grid rather than using it internally. *Id.*

³ The boiler feed pump is a device that is used to pump water into the boiler. 84 Fed. Reg. at 32,538. It consumes a “large fraction” of the power used to run the plant. *Id.* Because the boiler feed pump requires so much energy, the EPA suggested that “maintenance on these pumps should be rigorous to ensure both reliability and high-efficiency operation.” *Id.* Variable frequency drives “enable[] very precise and accurate speed control” of both boiler feed pumps and “induced draft (ID) fans,” which “maintain proper flue gas flow through downstream air pollutant control equipment[.]” *Id.* at 32,539. This precise control would reduce the excess use of fans and pumps, requiring less energy. *See id.*

The EPA identified two of its other chosen techniques—blade path and economizer upgrades—as the measures that, of all the considered technologies, were “expected to offer some of the largest [heat-rate] improvements.” ACE Rule, 84 Fed. Reg. at 32,537 (showing table predicting highest heat-rate improvement range in economizer redesign or replacements and blade path upgrades).⁴

But the EPA then stated that it expected some power plants would not adopt those two technologies because their use could trigger additional regulation that the companies would find burdensome. 84 Fed. Reg. at 32,537 (“[B]ased on public comments * * *, [blade path upgrades and economizer redesign or replacement] are [heat-rate improvement] technologies that have the most potential to trigger [New Source Review] requirements.”). In fact, the EPA did not model those two techniques in its regulatory impact analysis precisely because it was unlikely that they would be adopted. J.A. 1656–1657.

Finally, the EPA acknowledged that the proposed technologies could create a “rebound effect.” ACE Rule, 84 Fed. Reg. at 32,542. A rebound effect means that net carbon dioxide emissions actually *increase* as a result of the efficiency improvements made by power plants. *Id.* This happens because, as the efficiency upgrades make coal-based energy cheaper to produce, coal-fired power plants will have an incentive to run more often, thereby increasing their overall emissions. *Id.* The EPA found that risk of increased emissions irrelevant because its best system of emission reduction “is aimed at improving a source’s emissions *rate* performance at

⁴ “Blade path upgrades” consist of upgrades to the steam turbine. Economizers are heat-exchange devices that “capture waste heat from boiler flue gas” and use that captured heat to help heat the boiler feedwater. *Id.* at 32,540.

the unit-level,” rather than reducing the overall volume of emissions by individual sources. *Id.* at 32,543.

In choosing its seven proposed power-plant-based heat-rate improvement technologies, the EPA excluded from its best system several other suggested methods of reducing emissions, including (1) natural gas co-firing, repowering, and refueling; (2) biomass co-firing; and (3) carbon capture and storage technologies. ACE Rule, 84 Fed. Reg. at 32,543–32,547. The EPA rejected biomass co-firing primarily because “any potential net reductions in emissions from biomass use occur outside of the regulated source,” and so do not fall within the EPA’s reading of Section 7411(d) as confined to emission limits imposed at and to individual plants. *Id.* at 32,546. The EPA excluded natural gas co-firing and carbon capture and storage from its own best system, citing cost, geographical, and operational concerns. *Id.* at 32,544–32,545, 32,547–32,548. The EPA provided that sources could choose to use natural gas co-firing or carbon capture—but not biomass co-firing—to meet state-established standards of performance. *Id.* at 32,555.

3. Degree of Emission Limitation Achievable

Having determined its best system of emission reduction, the EPA then purported to prescribe the “degree of emission limitation achievable,” which States could use to create their own standards of performance. 42 U.S.C. § 7411(a)(1). What the EPA produced as its emission guidelines was a chart that prescribed heat-rate improvement “ranges” for each of the EPA’s chosen heat-rate improvement technologies, organized by power plants of differing sizes. ACE Rule, 84 Fed. Reg. at 32,537. The ranges show how much heat-rate improvement can be “expected” from use of each of the identified technologies. *Id.*

The EPA was explicit, though, that the “potential” range of heat-rate reduction was only illustrative and that the actual reduction for each of the EPA’s chosen technologies would be “unit-specific” and would “depend upon a range of unit-specific factors.” ACE Rule, 84 Fed. Reg. at 32,537–32,538. In that way, the ACE Rule made States responsible for evaluating “[heat-rate improvement] potential, technical feasibility, and applicability for each of the [best system of emission reduction] candidate technologies” on a power-plant-by-power-plant basis. *Id.* at 32,538. The ACE Rule expressly left States free to establish their own standards of performance for their power plants that “reflect a value of [heat-rate improvement] that falls *outside*” the ranges provided in the EPA’s chart. *Id.* (emphasis added). In other words, the minimums listed in the EPA’s emission-reduction chart were only suggestions.

The EPA explained that its non-mandatory ranges of efficiency reduction were valid because the applicability of the heat-rate improvement techniques to different plants and the effectiveness of each power plant’s existing technology may vary. *See* ACE Rule, 84 Fed. Reg. at 32,538 (stating that “not all” of the technologies would be “applicable or warranted at the level of a particular facility due to source-specific factors such as the site-specific operational and maintenance history, the design and configuration, [or] the expected operating plans”).

The EPA predicted that its ACE Rule would reduce carbon dioxide emissions by less than 1% from baseline emission projections by 2035. J.A. 1651. That calculation did not reflect emission *increases* that could result from the rebound effect.

4. Implementing Regulations

The ACE Rule included some new regulations under Section 7411(d). ACE Rule, 84 Fed. Reg. at 32,575-32,584 (codified at 40 C.F.R. pt. 60, subpart Ba). As relevant here, the regulations significantly extend the States' deadlines for the development and submittal of their plans for emission reduction from nine months to three years. *See* 40 C.F.R. § 60.23a(a)(1). Similarly, the new regulations extend the EPA's deadline to act on those plans from four months to one year. 40 C.F.R. § 60.27a(b). The new regulations also extend the EPA's deadline to substitute its own plan for a non-compliant State's plan from six months after the submission deadline to two years after a finding that the plan was incomplete, disapproved, or unsubmitted. *See* 40 C.F.R. § 60.27a(c). Finally, the requirement that States demonstrate compliance progress is now triggered only where a State's compliance schedule stretches more than two years from when its plan was originally due, as opposed to the one-year period in the prior regulations. *See* 40 C.F.R. § 60.24a(d).

E. PETITIONS FOR REVIEW

Twelve petitions for review of the ACE Rule were timely filed in this court and consolidated in this case. Nos. 19-1140 (lead case), 19-1165, 19-1166, 19-1173, 19-1175, 19-1176, 19-1177, 19-1179, 19-1185, 19-1186, 19-1187, 19-1188. The petitioners fall into three groups.

The first grouping consists of petitioners who seek review of the ACE Rule's conclusion that Section 7411 only permits emission reduction measures that can be implemented at and applied to the source. Those petitioners include (i) a coalition of State and municipal governments; (ii) power utilities;

(iii) trade associations from the renewable energy industry; and
(iv) several public health and environmental advocacy groups.⁵

The second grouping is petitioners who challenge the ACE Rule's imposition of any emission limits as unlawful because, in their view, (i) the EPA failed to make a specific endangerment finding for carbon dioxide emitted from existing power plants; (ii) the EPA's regulation of mercury emissions from coal-fired power plants under Section 7412 precludes the regulation of greenhouse gas emissions under Section 7411; and (iii) the EPA should have regulated carbon dioxide from stationary sources, including power plants, under the NAAQS program, 42 U.S.C. §§ 7408–7410.

The third petitioner group is the Biogenic CO₂ Coalition. They object only to the ACE Rule's determination that States may not count biomass co-firing as a method of complying with numerical emission limits.

F. JURISDICTION AND STANDARD OF REVIEW

This court has jurisdiction to review these petitions under the Clean Air Act. 42 U.S.C. § 7607(b)(1); *see also Sierra Club v. EPA*, 955 F.3d 56, 61 (D.C. Cir. 2020).

We may set aside the ACE Rule if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 42 U.S.C. § 7607(d)(1)(C), (d)(9)(A); *see also Maryland v. EPA*, 958 F.3d 1185, 1196 (D.C. Cir. 2020) (“[W]e apply the same standard of review under the Clean Air Act as we do under the Administrative

⁵ The public health and environmental advocacy groups also challenge the third prong of the ACE Rule—the new implementing regulations—as arbitrary and capricious.

Procedure Act.”) (quoting *Allied Local & Reg’l Mfrs. Caucus v. EPA*, 215 F.3d 61, 68 (D.C. Cir. 2000)).

II. SECTION 7411

A. STATUTORY CONTEXT

In enacting the Clean Air Act, “Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants.” *American Elec. Power Co. v. Connecticut (AEP)*, 564 U.S. 410, 426 (2011). As the Supreme Court has observed, 42 U.S.C. § 7411 “speaks directly to” and outlines the framework for that regulation. *Id.* at 424 (internal quotation marks omitted). Specifically, Section 7411 marks out a pair of distinct regulatory tracks for stationary sources of air pollutants. *See* 42 U.S.C. § 7411(a)(2), (6). The first track applies to new sources, *id.* § 7411(b), and the second to existing sources, *id.* § 7411(d). The statute calls for federal-state cooperation in regulating existing sources, affording distinct roles to the federal and state agencies in arriving at what Section 7411 calls “standards of performance” for the emission of air pollutants. *Id.* § 7411(a)(1), (c), (d)(1).

The regulatory regimes for new and existing sources differ in the process by which such standards are established—and the roles played by the respective regulatory actors. The Act assigns the EPA the main regulatory role in specifying the new-source pollution controls: After the EPA determines that a particular “category of sources * * * causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare,” it publishes regulations establishing standards of performance for new sources in that category. *Id.* § 7411(b)(1).

The process for regulating existing sources—which raise distinct concerns about sunk costs and the health and

environmental effects of older processes—involves more actors and steps. Regulation of a given category of existing sources is triggered by the same EPA air-pollution determination as for new sources. But for existing sources the Act adopts a cooperative-federalism approach that leaves the States discretion in determining how their State and industry can best meet quantitative emissions guidelines established by the EPA. *See AEP*, 564 U.S. at 424. Under Section 7411(d), the EPA and the States thus have distinct but complementary roles subject to different procedures and limitations. *See* 42 U.S.C. § 7411 (a)(1), (d)(1). This case concerns the mechanics of that cooperative framework for existing sources and, specifically, restrictions the Agency now claims the statute imposes on regulation of the air pollutants those sources emit.

Two provisions of Section 7411 shape the existing-source framework. Subsection (a)(1) defines a standard of performance, by reference to the “degree of emission limitation” that the EPA determines is “achievable,” as:

a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

42 U.S.C. § 7411(a)(1).

Subsection (d)(1), in turn, requires the Secretary to set up a system by which willing States can submit to the EPA “a plan which [] establishes standards of performance for any existing source.” *Id.* § 7411(d)(1). Only “where [a] State fails to submit a satisfactory plan” may the EPA step in and directly

promulgate standards of performance for existing sources. *Id.* § 7411(d)(2).

Putting these two provisions together results in what are best understood as three distinct steps involving three sets of actors, each exercising a degree of leeway in choice of control measures. *See* ACE Rule, 84 Fed. Reg. at 32,533, 32,549–32,550; Clean Power Plan, 80 Fed. Reg. at 64,665–64,666.

First, under subsection (a)(1), the EPA determines the “best system of emission reduction” that is “adequately demonstrated,” taking into consideration certain enumerated statutory criteria: cost, any nonair quality health and environmental impacts, and energy requirements. 42 U.S.C. § 7411(a)(1). The Agency then issues emission guidelines that quantify the “degree of emission limitation achievable through the application of the best system” it has identified. *Id.*; 40 C.F.R. § 60.22a; *see AEP*, 564 U.S. at 424; EPA Br. 21–22; ACE Rule, 84 Fed. Reg. at 32,523, 32,551.

Second, under subsection (d)(1), States issue standards of performance for existing sources that comply with the EPA’s emission guidelines and “reflect” the achievable degree of emission limitation set in those guidelines. *AEP*, 564 U.S. at 424; 42 U.S.C. § 7411(d)(1); 40 C.F.R. § 60.23a; *see also* Clean Power Plan, 80 Fed. Reg. at 64,666. That the standards must “reflect” the emission guidelines does not mean that they must embody the methods EPA contemplated in identifying the best system; rather, the States have flexibility in determining the specifics of the standards they issue so long as they accomplish the “degree of emission limitation” the EPA calculated based on its “best system.”

Third, the operators of regulated stationary sources implement measures to ensure they will in practice comply with the standards of performance their state agency has

established for them. *See* ACE Rule, 84 Fed. Reg. at 32,555. States often grant regulated entities some discretion in how they meet those standards. *See, e.g.,* N.Y. COMP. CODES R. & REGS. Tit. 6 § 201-6.4(f) (2013) (describing the “operational flexibility” afforded to Title V facility owners in New York State to “propose a range of operating conditions that will allow flexibility [for a facility] to operate under more than one operating scenario”).

The issue before us arises at the first step—the EPA’s determination of the best system of emission reduction. In the Clean Power Plan, the Agency determined that the best system was one that both improved the heat rate at power plants and prioritized generation from lower-emitting plants ahead of high-emitting plants. Clean Power Plan, 80 Fed. Reg. at 64,707. The EPA then calculated specific emission reductions achievable through application of that best system that it published as emission guidelines for States. *Id.* Had the Clean Power Plan gone into effect, States would then have submitted to the EPA plans based on the Agency’s guidelines that established standards of performance for sources in their jurisdictions, as provided for in subsection (d)(1). The Clean Power Plan left States flexibility in the measures they included in their plans, so long as they achieved a reduction in emissions at least as great as that achieved by EPA-established quantitative guidelines. *See, e.g., id.* at 64,665, 64,756–64,757, 64,734–64,737, 64,832–64,837. And it further allowed States, at their option, to give leeway to sources to select alternate compliance measures to make the requisite reductions. *See id.* at 64,834–64,835.

Based on what it now perceives to be an express and unambiguous textual limitation in Section 7411 that it says the Clean Power Plan overlooked, the EPA repealed that Plan and replaced it with the ACE Rule. The EPA’s new reading of the

statute requires the Agency, in modeling its “best system of emission reduction,” to consider only emission-reduction measures that “can be applied at and to a stationary source.” ACE Rule, 84 Fed. Reg. at 32,534; *see also id.* at 32,526–32,532.

We address below the EPA’s arguments regarding how the text and structure of Section 7411 purportedly support this limitation. That discussion is necessarily somewhat abstract and technical. So, for starters, it is worth bringing the matter more concretely into view.

Consider the effect the EPA’s new statutory interpretation had on its resulting Rule. First, because generation shifting is not, in the EPA’s view, a measure that can be applied “at and to” any one individual source, the ACE Rule limits the best system of emission reduction to heat-rate improvements alone. 84 Fed. Reg. at 32,534–32,535. Then, instead of publishing emission guidelines quantifying emission reductions achievable through application of the best system, the ACE Rule identifies what the Agency has determined are the most effective heat-rate technologies available and a potential range of heat-rate improvements achievable through application of each of those technologies. *Id.* 32,535–32,537.

As under the Clean Power Plan, the ACE Rule grants States flexibility in establishing standards of performance for sources pursuant to the Agency’s emission guidelines. Unlike the Clean Power Plan, however, the ACE Rule does not require that the States reach any specified minimum emission reduction. Instead, States must merely “evaluate the applicability of each of the candidate technologies” to sources within their jurisdiction and report their conclusions back to the Agency. ACE Rule, 84 Fed. Reg. at 32,550, 32,538–32,561.

The Rule recites that regulated entities have “broad

discretion” in meeting state-established standards, ACE Rule, 84 Fed. Reg. at 32,555, yet at the same time the Rule deems impermissible any compliance measure that cannot be applied at and to the source, *id.* The ACE Rule thereby disqualifies compliance by, for example, burning biofuel, *id.* at 32,557–32,558, which emits recently captured carbon dioxide, in contrast to fossil fuels’ release of carbon dioxide stored away millions of years ago. *See generally Center for Biological Diversity v. EPA*, 722 F.3d 401, 405–406 (D.C. Cir. 2013).

The question here is a relatively discrete one. We are not called upon to decide whether the approach of the ACE Rule is a permissible reading of the statute as a matter of agency discretion. Instead, the sole ground on which the EPA defends its abandonment of the Clean Power Plan in favor of the ACE Rule is that the text of Section 7411 is clear and unambiguous in constraining the EPA to use only improvements at and to existing sources in its best system of emission reduction.

The EPA contends that its current interpretation is “the only permissible interpretation of the scope of the EPA’s authority.” ACE Rule, 84 Fed. Reg. at 32,535. Our task is to assess whether Section 7411 in fact compels the EPA’s new interpretation. And because “deference to an agency’s interpretation of a statute is not appropriate when the agency wrongly believes that interpretation is compelled by Congress,” *Peter Pan Bus Lines, Inc. v. Fed. Motor Carrier Safety Admin.*, 471 F.3d 1350, 1354 (D.C. Cir. 2006) (quoting *PDK Labs., Inc. v. DEA*, 362 F.3d 786, 798 (D.C. Cir. 2004) (internal quotation marks omitted)), we may not defer to the EPA’s reading if it is but one of several permissible interpretations of the statutory language, *see Negusie v. Holder*, 555 U.S. 511, 521 (2009). That is, the “regulation must be declared invalid, even though the agency might be able to adopt the regulation in the exercise of its discretion, if it ‘was not

based on the agency's own judgment but rather on the unjustified assumption that it was Congress' judgment that such a regulation is desirable" or required. *Prill v. NLRB*, 755 F.2d 941, 948 (D.C. Cir. 1985) (quoting *FCC v. RCA Commc'ns*, 346 U.S. 86, 96 (1953) (formatting modified)); accord *Arizona v. Thompson*, 281 F.3d 248, 259 (D.C. Cir. 2002) (quoting *Prill*, 755 F.2d at 948).

For the reasons explained below, Section 7411 does not, as the EPA claims, constrain the Agency to identifying a best system of emission reduction consisting only of controls "that can be applied at and to a stationary source." ACE Rule, 84 Fed. Reg. at 32,534. The EPA here "failed to rely on its own judgment and expertise, and instead based its decision on an erroneous view of the law." *Prill*, 755 F.2d at 956. We accordingly must vacate and remand to the Agency "to interpret the statutory language anew." *Peter Pan Bus Lines*, 471 F.3d at 1354.

1. Text

As just noted, Section 7411 contemplates distinct roles for the EPA and the States in regulating existing stationary sources. See 42 U.S.C. § 7411(a)(1) (granting authority to the EPA to designate the best system and determine achievable degree of emissions reduction); *id.* § 7411(d)(1) (outlining the States' role in setting standards of performance for their sources). Nevertheless, the EPA now contends that language in Section 7411(a)(1) and (d)(1) "unambiguously limits the [best system of emission reduction] to those systems that can be put into operation at a building, structure, facility, or installation." ACE Rule, 84 Fed. Reg. at 32,524 (emphasis in original); see *id.* at 32,528; EPA Br. 70.

In the Agency's current view, the only pollution-control methods the Administrator can consider in selecting the "best

system of emission reduction” within the meaning of Section 7411(a) are add-ons or retrofits confined to the level of the individual fossil-fuel-fired power plant. ACE Rule, 84 Fed. Reg. at 32,524. That is so even though the record before the EPA shows that generation shifting to prioritize use of the cleanest sources of power is one of the most cost-effective means of reducing emissions that plants have already adopted and that have been demonstrated to work, and that generation shifting is capable of achieving far more emission reduction than controls physically confined to the source. *See, e.g.*, Clean Power Plan, 80 Fed. Reg. at 64,693, 64,728–64,729; 2 J.A. 598; Grid Experts Amicus Br. 13–16. In other words, the EPA reads the statute to require the Agency to turn its back on major elements of the systems that the power sector is actually and successfully using to efficiently and cost-effectively achieve the greatest emission reductions. *See* Grid Experts Amicus Br. 22 (observing that the ACE Rule “imposes greater abatement costs on industry than other approaches would to achieve the same effect”).

The Clean Power Plan could not stand, the EPA now concludes, because its consideration of generation shifting exceeded the Agency’s narrow authority under Section 7411’s plain text. ACE Rule, 84 Fed. Reg. at 32,526–32,527. In promulgating the Clean Power Plan, the EPA read “system of emission reduction” to mean “a set of measures that work together to reduce emissions and that are implementable by the sources themselves.” Clean Power Plan, 80 Fed. Reg. at 64,762. And it concluded that both heat-rate improvements and generation shifting “are components of a best system of emission reduction for the affected [electricity generating units] because they entail actions that the affected [units] may themselves undertake that have the effect of reducing their emissions.” *Id.* at 64,709 (internal quotation marks omitted).

All of that is wrong, the EPA has since decided. “[T]he Agency now recognizes that Congress ‘spoke to the precise question’ of the scope of [42 U.S.C. § 7411](a)(1) and clearly precluded the unsupportable reading of that provision asserted in the [Clean Power Plan].” ACE Rule, 84 Fed. Reg. at 32,527. The EPA insists that its current reading is mandated by the statutory text.

It is the EPA’s current position that is wrong. Nothing in Section 7411(a)(1) itself dictates the “at and to the source” constraint on permissible ingredients of a “best system” that the Agency now endorses. For the EPA to prevail, its reading must be required by the statutory text. *Peter Pan Bus Lines*, 471 F.3d at 1354. It fails for at least three reasons, any of which is alone fatal.

First, the plain language of Section 7411(a)(1), the root of the EPA’s authority to determine the best system, announces its own limitations. Those limitations simply do not include the source-specific caveat that the EPA now interposes and casts as unambiguous.

Second, there is no basis—grammatical, contextual, or otherwise—for the EPA’s assertion that the source-specific language of subsection (d)(1) must be read upstream into subsection (a)(1) to equate the EPA’s “application of the best system” with the controls States eventually will apply “at and to” an individual source. As the EPA at times acknowledges, the two subsections address distinct steps in the regulatory process, one focused on the EPA’s role and the other focused on the States’. Any question as to which limitations pertain to each regulatory actor cannot reasonably be said to have been resolved by Congress in favor of the unambiguous meaning the EPA now advocates.

Third, even if subsections (a)(1) and (d)(1) were read

together in the way the EPA proposes, they would not confine the EPA to designating a best system consisting of at-the-source controls. The EPA's entire theory hinges on the Agency's unexplained replacement of the preposition "for" in "standards of performance for any existing source" with the prepositions "at" and "to." Yet the statutory text calls for standards of performance "for" existing sources. Emission-reduction measures "for" sources may readily be understood to go beyond those that apply physically "at" and "to" the individual source. Emissions trading, for example, might be a way "for" a source to meet a standard of performance.

The shortcomings of its statutory interpretation are more than enough to doom the Agency's claim that Section 7411 announces an unambiguous limit on the best system of emission reduction. The issue is not whether the EPA's counterarguments to each of these points might show its interpretation to be permissible as an exercise of discretion. Again, the EPA has not claimed to be exercising any such discretion here. It insists instead that the unambiguous terms of the statute tie its hands.

After reviewing what Section 7411 clearly says about the nature and limits of the "best system of emission reduction" that Congress called on the EPA to determine, we take up each of the EPA's arguments to show why Section 7411 does not unambiguously support its at-the-source restriction.

a. Section 7411(a) Defines the Best System

The EPA acknowledges, as it must, that Section 7411(a) is the source of the EPA's authority and responsibility to determine the best system of emission reduction for existing sources and set corresponding emission guidelines. *See, e.g.,* ACE Rule, 84 Fed Reg. at 32,534. Indeed, that is the only subsection in which the term "best system of emission

reduction” appears. But the EPA offers no reading of subsection (a)(1) itself.

Section 7411(a)(1) expresses Congress’ expectation that the EPA will study all “adequately demonstrated” means of emission reduction. And it directs the EPA to draw on “adequately demonstrated” methods to determine the “best” system to reduce emissions. Congress imposed no limits on the types of measures the EPA may consider beyond three additional criteria: cost, any nonair quality health and environmental impacts, and energy requirements. 42 U.S.C. § 7411(a)(1). Congress largely called on the expert judgment of the EPA to determine for a particular source category and pollutant which already-demonstrated methods compose the “best system.”

Because it did not set out separate definitions for either “system” or “best,” those words take their ordinary meanings. *See Sandifer v. United States Steel Corp.*, 571 U.S. 220, 227 (2014). Webster’s Dictionary offers a representative definition of “system” contemporaneous with the Act’s adoption: “[A] complex unity formed of many often diverse parts subject to a common plan or serving a common purpose.” *System*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 2322 (2d ed. 1968). The superlative “best” as applied to a “system of emission reduction” plainly places a high priority on efficiently and effectively reducing emissions. *See Best*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/best> (last visited Jan. 11, 2021) (“excelling all others,” “offering or producing the greatest advantage, utility, or satisfaction”).

The ordinary meanings of these terms “reflect[] an intentional effort to confer the flexibility necessary” for effective regulation appropriate to the context. *Massachusetts*

v. *EPA*, 549 U.S. 497, 532 (2007). As the Supreme Court has acknowledged, “the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred.” *Whitman v. American Trucking Ass’n*, 531 U.S. 457, 475 (2001); see *Gaughf Props., L.P. v. Commissioner*, 738 F.3d 415, 424–425 (D.C. Cir. 2013); *Sabre, Inc. v. Department of Transp.*, 429 F.3d 1113, 1122, 1124–1125 (D.C. Cir. 2005). Congress in Section 7411 deliberately charged the EPA with identifying the best system of emission reduction to keep pace with escalating threats to air quality, and, within expressed limits, empowered it to make the judgments how best to do so.

The Agency simply ignores how the statutory text defines the “best system of emission reduction,” asserting instead that definitional language does not confer regulatory authority. See, e.g., EPA Br. 58–59 (“[I]t is not Section 7411(a) (‘Definitions’) that grants the agency authority to act.”). Section 7411(a)(1)’s designation as a definitional provision deprives it of standalone meaning, the EPA contends. The EPA instead reads it as “subsidiary” to Section 7411(d), regarding state standards of performance for existing sources. EPA Br. 58. But Congress does indeed use definitional provisions to confer regulatory authority. See, e.g., *Weinberger v. Bentex Pharm, Inc.*, 412 U.S. 645, 652–653 (1973) (holding that the statutory definition of “new drug” confers authority upon the FDA). That is precisely what it did in Section 7411(a)(1). See *Sierra Club v. Costle*, 657 F.2d 298, 321 (D.C. Cir. 1981) (describing Section 7411(a)(1) as authorizing the EPA to determine the best system of emission reduction and regulate accordingly); 40 C.F.R. 60.22a.

The EPA offers no support—apart from its own new-found version of “statutory interpretation 101,” EPA Br. 65—for ignoring how the Act itself defines and limits the “best

system” determination. Nor does it offer any sound justification for importing language from a different provision governing States’ “standards of performance.” The EPA’s “at and to the source” limitation on “best system” finds no footing in the text of Section 7411(a)(1).

b. Section 7411(d)(1) Does Not Change the Definition

Even taking the EPA’s argument on its own terms does not work because Section 7411(d)(1)’s text and statutory context get it no further. To support its narrow reading of the EPA’s authority to determine the “best system,” the Agency focuses on the phrase “through the application of” in Section 7411(a)(1). That provision defines a “standard of performance” as an emission standard that “reflects the degree of emission limitation achievable through the application of the best system of emission reduction[.]” The EPA says the “application” phrase “requires both a direct object and an indirect object.” ACE Rule, 84 Fed. Reg. at 32,524; *accord* EPA Br. 66–68. And, it continues, Congress cannot have meant to leave its indirect object undefined. The EPA says that, grammatically speaking, someone must apply something (the direct object) to something else (the indirect object). EPA Br. 115–116, 118–119. It then picks its preferred, narrow indirect object from a different statutory subsection and casts that object as the only statutorily permissible choice. *See* 84 Fed Reg. at 32,524.

The EPA locates an indirect object in Section 7411(d). Unlike subsection (a)(1), subsection (d)—entitled “Standards of performance for existing sources”—explicates an indirect object. 42 U.S.C. § 7411(d). Borrowing from subsection (d), then, the EPA imports into subsection (a)(1) a limitation of the “best system of emission reduction” to measures that can be applied “to and at *an individual existing source*—i.e., any

building or facility subject to regulation.” EPA Br. 58 (emphasis added); *see also* ACE Rule, 84 Fed. Reg. at 32,534.

But the language to which the EPA points supplies the indirect object only of “standards of performance” adopted by States pursuant to Section 7411(d)(1), not of the EPA’s “best system of emission reduction” determined pursuant to Section 7411(a)(1). The latter phrase does not even appear in Section 7411(d)(1). To reach its preferred result, the Agency invokes surmise rather than statutory text. It insists that the limitations on States’ standards of performance in Section 7411(d)(1)—the second step in the regulatory process—must be read upstream to limit the EPA’s “best system of emission reduction” in subsection (a)(1). Nothing in the statute so requires.

In the text, States’ standards of performance need only “reflect” the emission guidelines (or “degree of emission limitation achievable”) the EPA calculates based on the “best system of emission reduction” it determines. As laid out in the statute and explained above, those state-developed “standards of performance” follow on but are legally and functionally distinct from the “best system” that the EPA develops. The EPA is simply wrong that the statute clearly and unambiguously requires that the unstated indirect object of “application of the best system of emission reduction” under Section 7411(a)(1) must be the same as the indirect object of States’ standards of performance as stated in Section 7411(d)(1).

Neither does the grammatical rule the EPA invokes to bridge the gap between these subsections hold up. The crux of the EPA’s textual argument is that “the verb ‘to apply,’ requires both a direct object and an indirect object.” ACE Rule, 84 Fed. Reg. at 32,524; EPA Br. 66–68. The first obvious problem is

that, in the relevant passage of Section 7411(a)(1), Congress did not use the verb “apply,” but rather the noun “application.” The EPA acknowledges this distinction in passing in the ACE Rule, but dismisses it without discussion, offering only that “‘application’ is derived from the verb ‘to apply[.]’” 84 Fed. Reg. at 32,524. That is, of course, true, as far as it goes. The phrase “application of the best system of emission reduction” is what is called a nominalization, a “result of forming a noun or noun phrase from a clause or a verb.” *Nominalization*, Merriam-Webster Dictionary <https://www.merriam-webster.com/dictionary/nominalization> (last visited Jan. 11, 2021). Grammar assigns direct or indirect objects only to verbs—not nouns. No objects are needed to grammatically complete the actual statutory phrase. So much for the grammatical imperative.

Even if we were to take the EPA’s leap to the verb “apply” from the noun “application” that actually appears in the statute, the Agency comes up short. The EPA is incorrect to insist that the verb “apply” requires an indirect object. There is nothing ungrammatical about the sentence “In its effort to reduce emissions, the EPA applied the best system of emission reduction.” The verb “apply,” like its nominalization, may properly be used in a sentence with or without an explicit indirect object. *See Apply*, THOMAS HERBST ET AL., A VALENCY DICTIONARY OF ENGLISH 41–42 (Ian F. Roe et al. eds., 2004) (listing examples of grammatically correct uses with and without direct and indirect objects).⁶

⁶ Take, for instance, the following sentences: “It appears to violate GATT regulations, but the rules for applying the regulations are vague and the Netherlands has so far escaped censure”; “This information may not apply in Scotland, which has a different legal system.” *Apply*, THOMAS HERBST ET AL., A VALENCY DICTIONARY

The EPA's shift from nominalization to verb does not, in any event, accomplish much. Either way, the lack of an explicit indirect object in Section 7411(a)(1) does not require that one be borrowed from Section 7411(d)(1). Equally logical indirect objects include, for example, the entire category of stationary sources, or the air pollutant to be limited. In any event, the best system cannot reasonably be said to be unambiguously applicable only to the indirect object the EPA suggests.

The EPA faults the Clean Power Plan for reading "application of" to be functionally equivalent to "implementation of," because "implement" "does not require an indirect object." EPA Br. 73. But neither does "application." So "application" textually supports adoption of the Clean Power Plan just as well as "implementation." Again, so much for grammar mandating the EPA's result.

The argument fails either way, but the fact is that Congress used the nominalization "application of" the best system of emission reduction. A nominalization enables the drafter to leave certain information unspecified—namely, who is acting and where their action is directed. *See, e.g.,* George D. Gopen, *Who Done It? Controlling Agency in Legal Writing, Part II*, 39 LITIG. 12, 12–13 (Spring 2013) (describing how nominalizations create ambiguity). Legal writers, including Congress, employ nominalizations all the time. And they do so with the full awareness that their use preserves flexibility.

Congress reasonably built in leeway for the EPA to

OF ENGLISH 41–42 (examples from sections D1 and D5). Additional examples abound. *See, e.g., Apply*, OXFORD ENGLISH DICTIONARY (3d ed. 2008) (def. I.9) ("Crest bought the firm[,] and, by applying its marketing and distribution muscle, has turned it into a \$200 million category killer.").

exercise technical expertise in applying Section 7411, given the variety of pollution problems that it covers and the importance of allowing States maneuvering room under the cooperative federalism scheme. Congress may avoid specifying subjects, objects, or other grammatical information because a degree of adaptability suits the statutory role and purpose. One way Congress can denote that it has delegated to an agency's judgment the task of filling in the on-the-ground details of a statutorily defined program is by declining to dictate grammatically optional information, *see Lehrfeld v. Richardson*, 132 F.3d 1463, 1465–1466 (D.C. Cir. 1998); *Appalachian Power Co. v. EPA*, 135 F.3d 791, 808–810 (D.C. Cir. 1998), including an indirect object that the rules of grammar do not require be explicitly stated, *see, e.g., Peter Pan Bus Lines*, 471 F.3d at 1353–1354.

Even if an implicit indirect object can be surmised, there is more than one plausible candidate here, and the statute does not unambiguously dictate the object. There certainly is no rule—grammatical or otherwise—that the specific indirect object must be the one to which the EPA now points. At the least, other contextually appropriate indirect objects of the “best system” include the source category or the emissions. The EPA has failed to establish that the sole and unambiguous indirect object must be the individual source. The EPA, of course, “may fill the gap[s] the Congress left,” and any such “regulation is entitled to deference.” *Gaughf Props.*, 738 F.3d at 424; *see also Appalachian Power*, 135 F.3d at 811–812. But in the ACE Rule and in its briefing here, the EPA has assiduously denied the existence of any gap at all. That was error.

c. EPA's Reading Itself Falls Short

The third and equally fatal flaw in the EPA's textual

analysis is its unexplained substitution of the prepositions “at” and “to” where the text it would have us borrow from subsection (d)(1) actually says “for” in referencing “standards of performance for any existing source.” *See, e.g.*, ACE Rule, 84 Fed. Reg. at 32,534. As we do with any words enacted by Congress, we must give effect to the preposition it chose. *Cf. Telecommunications Res. & Action Ctr. v. FCC*, 801 F.2d 501, 517–518 (D.C. Cir. 1986) (finding decisive Congress’ use of the preposition “under” instead of “by”). The word Congress actually used—“for” the source—lacks the site-specific connotation on which the EPA’s case depends.

In its brief, the EPA presents the compound construction it says inexorably follows from reading text from subsection (a)(1) together with text from subsection (d)(1), and says it is restricted to determining a “best system of emission reduction *for* any building, structure, facility, or installation.” EPA Br. 56 (formatting modified) (quoting 42 U.S.C. § 7411(a)(1), (a)(3), (a)(6), (d)(1)). The Agency then asserts that “the natural reading” of its proffered construction is that “the methods planned would be ‘for’ *and act at* the level of the singular, individual source.” *Id.* at 62 (emphasis added).

In the preamble to the ACE Rule, the EPA went further, fully substituting the prepositions “at” and “to” in place of the preposition “for” that actually appears in the text the Agency says must be borrowed from subsection (d)(1). ACE Rule, 84 Fed. Reg. at 32,534. It relies on that further substitution to insist that the best system of emission reduction designated by the EPA must be limited to controls “that can be applied at and to,” not “for,” “a stationary source.” *Id.*; *see also id.* at 32,524 (“at”); *id.* at 32,532, 32,534, 32,556 (“at and to”); *id.* at 32,555, 32,529 (“to and at”); *id.* at 32,543 (“at or to”); *id.* at 32,526 n.65 (“to or at”); EPA Br. 4, 58, 74. But nowhere in the ACE Rule does the EPA explain this swap of one preposition for two

meaningfully more restrictive ones. *See, e.g.*, 84 Fed. Reg. at 32,523–32,524, 32,534–32,535.

The EPA rewrites rather than reads the plain statutory text. Section 7411(a)(1), even if cross-referenced to subsection (d)(1) in the way the EPA says it must be, calls for the Agency to determine “the degree of emission limitation achievable through the application of the best system of emission reduction *for* any existing source”—not the application of the best system “at” and “to” such a source. And the word “for” lacks the physical on-site connotation that is so critical to the EPA’s reading of the statutory text. Indeed, a standard of performance or system of emission reduction “for” a source just means that the system is “with regard or respect to” or “concerning” the source. *See For*, OXFORD ENGLISH DICTIONARY (2d ed. 1989) (def. 26). In contrast, “at” and “to” tend to connote direct physical proximity or contact. *See At*, OXFORD ENGLISH DICTIONARY (3d ed. 2008) (def. 1.a) (“usually determining a point or object with which a thing or attribute is practically in contact”); *To*, OXFORD ENGLISH DICTIONARY (3d. ed 2008) (def. 5.a) (“Into (or in) contact with; on, against”). A best system “for” a source thus might entail a broader array of controls that concern but are not immediately physically proximate to the source—such as, for instance, generation shifting.

* * *

In sum, the straitened vision of the EPA’s best system that the Agency espies in Section 7411 is simply not supported by the text, let alone plainly and unambiguously required by it. The Act calls on the EPA to determine the degree of emission limitation achievable through “application of the best system of emission reduction” without specifying the system’s indirect object, and uses the preposition “for” when it calls on the States

to develop “standards of performance for existing sources.” 42 U.S.C. § 7411(a), (d). It simply does not unambiguously bar a system of emission reduction that includes generation shifting.

The EPA’s position depends critically on words that are not there. It erroneously treats a nominalization of a verb as requiring an indirect object, collapses two separate functions and provisions of the Act in order to supply a borrowed indirect object, does so without any evidence that the borrowed indirect object was what Congress necessarily intended, and narrowly focuses the Agency’s authority on that indirect object by using a different preposition from the one that actually appears in the borrowed text. Each of those interpretive moves was a misstep. Read faithfully, Section 7411(a)(1) lacks the straitjacket that the EPA imposes.

Policy priorities may change from one administration to the next, but statutory text changes only when it is amended. The EPA’s tortured series of misreadings of Section 7411 cannot unambiguously foreclose the authority Congress conferred. The EPA has ample discretion in carrying out its mandate. But it may not shirk its responsibility by imagining new limitations that the plain language of the statute does not clearly require.

2. Statutory History, Structure, and Purpose

Even looking beyond the text does nothing to substantiate the EPA’s proposed reading of Section 7411. *See Kiewit Power Constructors Co. v. Secretary of Labor*, 959 F.3d 381, 395 (D.C. Cir. 2020) (Henderson, J.) (“To discern the Congress’s intent, we generally examine the statutory text, structure, purpose and its legislative history.”) (quoting *Lindeen v. SEC*, 825 F.3d 646, 653 (D.C. Cir. 2016)). These other tools of statutory interpretation underscore the flexibility

of Section 7411(a)'s text, not the cabined reading the EPA proposes.

We begin by acknowledging Section 7411's role within the Clean Air Act. It is a catch-all, intended to ensure that the Act achieves comprehensive pollution control by guaranteeing that there are "no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." S. REP. NO. 91-1196, at 20 (1970). In other words, Section 7411 is intended to reach pollutants that do not fit squarely within the ambit of the Act's other regulatory provisions. It authorizes regulation of pollutants not controlled by the other programs under the Act. The EPA does not contest that greenhouse gases emitted by powerplants fit that description.

The Agency points to statutory structure and history for evidence that Congress restricted the "best system of emission reduction" under Section 7411(a) to physical controls that are applied "at and to" an existing source. But the history and structure only confirm what the text shows: Nothing the EPA has identified suggests that Congress in Section 7411 meant to so constrict what might be part of a "best system of emission reduction."

The Congress that enacted Section 7411 was well aware that what a "best system" might comprise is necessarily dynamic and evolving. Congress' main limitation was that the "best system" selected by the EPA must be "adequately demonstrated." 42 U.S.C. § 7411(a)(1). And it stated three other key criteria—cost, nonair quality health and environmental impact, and energy requirements—as factors the EPA must take into account. *See id.* With those parameters in place, Congress largely left the identification of the best

system of emission reduction to the Agency's expert scientific judgment.

Consider cues from the Clean Air Act as a whole. In contrast to other systemic benchmarks in the Act, Section 7411(a)(1)'s prescription of the "best system of emission reduction" is striking for its paucity of restrictive language. References to more specific categories of emission-reduction tools appear elsewhere in the Act. A provision governing the Nitrogen Oxides Emissions Reduction Program, for example, directs the Administrator to establish limits based on the "degree of reduction achievable through the *retrofit application* of the best system of continuous emission reduction, taking into account *available technology*[" 42 U.S.C. § 7651f(b)(2) (emphasis added). The Act's regional haze program is likewise specific in its call for use of the "best available *retrofit technology*." *Id.* § 7491(b)(2)(A), (g)(2). The specificity of those other provisions highlights the comparative generality of Section 7411(a)'s reference to the "best system of emission reduction."

The sole provision the EPA highlights to shore up its at-the-source theory only further undermines it. The EPA points to the Act's Prevention of Significant Deterioration (PSD) program, 42 U.S.C. § 7475, and its requirement of controls at least as stringent as limits set under Section 7411, *see id.* § 7479(3), to argue that that "the interrelationship between the two types of standards"—the best system of emission reduction and the best available control technology—"is only intelligible if the standards are *in pari materia*." EPA Br. 85. But the distinct roles of the two provisions make clear that the limits in Section 7475 have no place in Section 7411(a)(1).

To qualify for a permit under the PSD program before a source may be built or modified, an applicant must affirm that

it will apply to each source the “best available control technology,” or BACT, to limit its emissions. 42 U.S.C. § 7475(a)(4). The statute defines BACT as the degree of control that the permitting agency “determines is achievable for such [major emitting] facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques[.]” *Id.* § 7479(3). The statute further provides that BACT cannot “result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to [S]ection 7411 or 7412 of this title.” *Id.* § 7479(3). The listed BACT options, EPA observes, are all physically applicable to the source unit. EPA Br. 85.

But the EPA ignores a critical detail: The BACT requirement applies only to newly constructed or modified sources. *See Alaska Dep’t of Env’t Conservation v. EPA*, 540 U.S. 461, 472 (2004) (describing 42 U.S.C. § 7475). Any standard established under Section 7411 and also “applicable,” per the statutory cross-reference, to a facility regulated for prevention of significant deterioration under Section 7475 would be a standard for new or modified sources established pursuant to Section 7411(b). The BACT requirement does not apply to the existing sources covered by the provision at issue here, Section 7411(d). *See New York v. EPA*, 413 F.3d 3, 13 (D.C. Cir. 2005). Even if Section 7475 tracks Section 7411(b), there is simply no conflict between, on one hand, requiring new source construction to employ the newest and best at-the-source control technologies and, on the other, empowering the EPA to look to a wider range of ways to reduce emissions when it regulates older, existing sources.

The anomaly of looking to Section 7475(a)(4) to confine Section 7411 is highlighted by the fact that BACT permits are

required only in so-called “non-attainment” areas of the country. *See* 42 U.S.C. §§ 7407, 7472, 7474. We are unpersuaded that Congress buried a limit on the EPA’s Section 7411 authority to address pollution from existing sources throughout the Nation by making reference to a floor for certain new facilities in certain parts of the country.

The statutory history of the BACT requirement further demonstrates that Congress did not intend that it weaken Section 7411(d). Sections 7475 and 7479 were enacted in the 1977 Clean Air Amendments, Pub. L. No. 95-95, §§ 165, 169, 91 Stat. 685, 735–742 (Aug. 7, 1977). In the very same legislation, Congress restricted the best system of emission reduction for *new* sources to technological methods while explicitly allowing the best system for *existing* sources to include non-technological methods. § 109(c)(1)(A), 91 Stat. at 700. If Congress wanted to confine Section 7411 to at-the-source technologies, it would have done so directly rather than hiding such a substantial limitation in an implicit inference from a more remote statutory provision.

The Clean Air Act’s legislative history, including the history of the 1970 enactment of Section 7411 and the 1977 and 1990 amendments, further shows that Congress never imposed on the “best system of emissions reduction” the constraints the EPA now advocates. Before Congress settled on the best-system language it enacted in 1970, the Senate bill proposed to authorize the EPA to set standards for stationary sources “reflect[ing] the greatest degree of emission control” achievable through “the latest available control technology, processes, operating methods, or other alternatives.” S. 4358, 91st Cong. § 6 (1970). The phrase “other alternatives” was understood to encompass “[t]he maximum use of available means of preventing and controlling air pollution”—without limitation to technological or at-the-source means. S. REP. NO.

91-1196, at 16. The Senate believed that was “essential” to limit emissions from both new and existing sources. *Id.* The House, for its part, proposed an initial version of Section 7411 that would have “require[d] new sources to ‘prevent and control [their] emissions to the fullest extent compatible with the available technology and economic feasibility,’” H.R. 17255, 91st Cong. § 5 (1970), but included no provision regarding the regulation of existing sources.

As enacted, Section 7411 simply requires that the EPA identify as its benchmark for existing sources the “best system of emission reduction.” 42 U.S.C. § 7411(a)(1). Nothing that the EPA identifies or that we discern in the relevant history shows the enacting Congress myopically “focused on steps that can be taken at and by individual sources to reduce emissions.” EPA Br. 69. And of course, even if Congress at that time was only thinking of at-the-source controls, the EPA was well aware that environmental problems and their solutions rapidly evolve. At the end of the day, it is the statutory text that governs. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020).

Congress has consistently relied on the EPA’s expert judgment in identifying the “best system” for existing sources. Its action in making, and then undoing, a limiting amendment to Section 7411’s “best system of emission reduction” just for new and modified sources—not existing sources—underscores the point. First, Congress in 1977 amended the standard for new sources to require use of “the best technological system of continuous emission reduction,” but did not make any parallel change to the standard for existing sources to add those “technological” and “continuous” limitations. Clean Air Amendments Act of 1977, Pub. L. No. 95-95, § 109(c)(1)(A), 91 Stat. 685; *see also id.* at 700 (adding Section 7411(a)(1)(C)). Then, in 1990, Congress again amended Section 7411, this time

to remove those additional limitations, reverting for new sources to the “best system of emission reduction” that had applied all along to existing sources. Clean Air Act Amendments of 1990, Pub. L. No. 101-549, § 403(a), 104 Stat. 2399, 2631 (1990).

The amendment and re-amendment of the new-source “best system” language emphasizes that Congress consistently avoided imposing any such technological, at-the-source limitation on the measures that EPA might include in the “best system” for reducing emissions from existing-source categories. And it shows that Congress had always understood the existing-source “best system” language to go beyond the technological restrictions that it briefly imposed on the parallel new source provision.

The ACE Rule is the first EPA rule to read the statute as so strictly boxing in the Agency. Although agency practice cannot directly show whether Congress had a specific intent on the matter in question, it is notable that the regulators closest to the issue never before saw what the EPA now insists is obvious on the face of Section 7411.

Over the last half century, no prior Administrator read the Act to foreclose from consideration in the “best system” all but at-the-source means of emission control. Rather, the EPA has exercised latitude to consider any adequately demonstrated approach to reducing harmful pollutants from existing source categories that it believed met the cost, grid-reliability and other statutory criteria. 42 U.S.C. § 7411(a)(1). Where the characteristics of the source category and the pollutant at issue point to emissions trading programs or production shifts from higher- to lower-emitting sources as components of the “best system,” the EPA has in the past consistently concluded that it had the authority to consider them.

During the administration of President George W. Bush, for example, the EPA adopted the Clean Air Mercury Rule, 70 Fed. Reg. 28,606 (May 18, 2005), which included a mercury cap-and-trade program as a component of its best system of emissions reduction for existing coal-fired power plants, *see id.* at 28,619–28,620; *id.* at 28,617 (“EPA has determined that a cap-and-trade program based on control technology available in the relevant timeframe is the best system for reducing [mercury] emissions from existing coal-fired Utility Units.”).⁷

The EPA’s Clinton-era regulation of nitrogen oxide emissions from municipal solid waste combustors likewise relied on Section 7411(d), together with the EPA’s waste-management authority under Section 7429, to authorize States to include emissions-trading programs in their State Plans. 40 C.F.R. § 60.33b(d)(2). Under state standards of performance designed to meet guidelines the EPA derived from its “best system,” regulated entities were permitted to average the emission rates of multiple units within a single plant as well as trade emission credits with other plants. Municipal Waste Combustors Rule, 60 Fed. Reg. 65,387, 65,402 (Dec. 19, 1995).

The EPA’s efforts to distinguish those other Section 7411(d)(1) programs do not work. The EPA claims that the Mercury Rule did not primarily rely on a cap-and-trade

⁷ We vacated the Mercury Rule for unlawfully delisting mercury-emitting electric utility steam generating units from the Section 7412 Hazardous Air Pollutants list. *See New Jersey v. EPA*, 517 F.3d 574, 582–584 (D.C. Cir. 2008). Because we held those mercury sources must be listed, and because Section 7411 cannot be used to regulate air pollutants listed under Section 7412, the existing-source rule the EPA had adopted under Section 7411(d) to control those same mercury emissions from power plants failed as well.

or dispatch shifting program, but rather that the best system rested on a “combination of a cap-and-trade mechanism and * * * the technology needed to achieve the chosen cap level.” EPA Br. 72 n.20 (quoting ACE Rule, 84 Fed. Reg. at 32,526). To be clear, that sort of hybrid best system, involving both on-site and system-wide elements, is precisely what the EPA now insists is unprecedented and expressly barred by the statute’s text.

Lest there be any doubt that the Mercury Rule’s best system rested in significant part on the cap-and-trade mechanism, we note that the EPA in fact approved state implementation plans that adopted *none* of the on-site controls included in the best system and instead relied *entirely* on implementation of the best system’s cap-and-trade program. *See, e.g.*, Notice of Intent, 32 La. Reg. 869, 870 (May 20, 2006) (proposing an implementation plan solely reliant on cap-and-trade); Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Louisiana, 72 Fed. Reg. 46,188, 46,188 (Aug. 17, 2007) (approving Louisiana’s proposal on the basis that it “would meet [Clean Air Mercury Rule] requirements by participating in the EPA administered cap-and-trade program addressing [mercury] emissions”). Contrary to the EPA’s assertions, *e.g.* EPA Br. 4, the Agency plainly has previously embraced beyond-the-source measures of emission reduction as authorized by the statutory text.

The EPA’s invocation of its own past practice under Section 7411 falls wide of the mark. It errs in insisting that “the *more than seventy* Section 7411 rules” promulgated for “roughly forty-five years” somehow reflect a consistent adherence to the Agency’s new view. EPA Br. 4, 88; *see id.* at 37–38, 88–89; ACE Rule, 84 Fed. Reg. at 32,526. Almost all of the rules to which it refers are irrelevant to the issue at hand. They were for new sources, subject to Section 7411(b), not

existing sources under Section 7411(d). *See* 84 Fed. Reg. at 32,526.

Older facilities that may be capable only of outdated, more polluting methods of generation present different regulatory challenges than new sources. As discussed above in connection with the EPA's reference to BACT requirements for new-source permitting under the PSD program, a requirement that owners and operators constructing new facilities apply state-of-the-art, lowest-emitting equipment and methods "at and to the source" might well be the best available means of reducing emissions for that source category. The same cannot be said for existing sources. A central error of the ACE Rule is that it fails to appreciate that difference. It identifies a handful of measures applicable to and at the source that the EPA suggests may achieve slight reductions. But industry practice demonstrates that better, lower-emitting, reliable, and cost-effective systems for reducing emissions from existing power plants typically also shift generation away from higher-emitting, fossil-fuel-fired capacity when renewable or lower- or zero-emitting generation is an available substitute.

Because the best, most efficient and effective systems for controlling emissions from existing sources ordinarily differ from the best systems for new sources, they are regulated via a distinct statutory track. Only the Section 7411(d) rules are relevant to the EPA's prior understanding of its authority to regulate existing sources. Those prior EPA rules contradict the EPA's position here. Before its about-face in the ACE Rule, all three of the Agency's most recent Section 7411(d) rules included emissions trading or generation shifting to lower-emitting sources. *See* Clean Power Plan, 80 Fed. Reg. at 64,755–64,756; Clean Air Mercury Rule, 70 Fed. Reg. at

28,606, 28,617, 28,619–28,620; Municipal Waste Combustors Rule, 60 Fed. Reg. 65,387, 65,402 (Dec. 19, 1995).

To put the EPA’s mistaken reading of Section 7411 in perspective, consider how it effectively relegates federal regulators back to the sidelines where they stood before Congress overhauled the Clean Air Act in 1970. The federal government had until then done little more than provide information and guidance to cheer on States’ air-quality regulators. *See Train v. NRDC*, 421 U.S. 60, 64 (1975) (noting that the States’ response to earlier iterations of the Act focused on information and incentives had been “disappointing”).

With the 1970 amendments, a virtually unanimous Congress dramatically strengthened the federal government’s hand in combatting air pollution. *See Train*, 421 U.S. at 64 (“These Amendments sharply increased federal authority and responsibility. * * * The difference * * * was that the States were no longer given any choice as to whether they would meet th[eir statutory] responsibility.”); *cf. EPA v. EME Homer City Generation, LP*, 572 U.S. 489, 497 (2014) (noting this progression toward “increasing[ly] rigor[ous]” federal regulation of interstate air pollution). Congress did so “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population[.]” 42 U.S.C. § 7401(b)(1). The EPA’s newly enhanced authority was “designed to provide the basis” for “a massive attack on air pollution.” S. REP. NO. 91-1196, at 1. Section 7411(d) ensured that there would be “no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare.” *Id.* at 20.

Describing the Act shortly before its passage, Republican Senator John Cooper explained that the “philosophy of the bill

abandons the old assumption of requiring the use of only whatever technology is already proven and at hand” and instead “set[s] out what is to be achieved.” 116 CONG. REC. 32,919 (1970). To that end, the Act did not finely detail specific approaches to enumerated sources or types of air pollution. *See* 116 CONG. REC. 32,901–32,902 (1970) (statement of Sen. Muskie). Congress chose instead to entrust the EPA with flexible powers to craft effective solutions. Only by doing so could air quality regulation hope to reflect developing understandings of escalating problems and bring to bear as-yet-unseen solutions.

American air quality is the proof of that approach. The EPA has worked closely with industry, States, and the public to develop the world’s most nimble, responsive, and effective regime of air pollution regulation. For example, in the half-century since the 1970 Act, “the combined emissions of***six key pollutants regulated under the National Ambient Air Quality Standards dropped by 73 percent” between 1970 and 2017. *EPA Releases 2018 Power Plant Emissions Demonstrating Continued Progress*, EPA (Feb. 20, 2019), <https://www.epa.gov/newsreleases/epa-releases-2018-power-plant-emissions-demonstrating-continued-progress> (last visited Jan. 11, 2021).

The EPA’s new reading of Section 7411 would atrophy the muscle that Congress deliberately built up. The EPA asserts it lacks authority to curb a pollutant that the Agency itself has repeatedly deemed a grave danger to health and welfare but that eludes effective control under other provisions of the Act. We do not believe that Congress drafted such an enfeebled gap-filling authority in Section 7411.

* * *

In sum, traditional tools of statutory interpretation reveal nothing in the text, structure, history, or purpose of Section 7411 that compels the reading the EPA adopted in the ACE Rule.

3. Compliance Measures

In the ACE Rule, the EPA also limited the measures that sources may use to comply with the States' standards of performance set under Section 7411(d). Recognizing that sources generally have "broad discretion" in how they comply with state standards, 84 Fed. Reg. at 32,555, the EPA nonetheless categorically excluded two specific measures from the States' consideration: averaging and trading, and biomass co-firing. It did so on the ground that these measures do not meet two criteria it determined were required of compliance measures: that they be (1) "capable of being applied to and at the source" and (2) "measurable at the source using data, emissions monitoring equipment or other methods to demonstrate compliance[.]" *Id.* The EPA identified these criteria on account of "both legal and practical concerns[.]" *Id.*

The Agency's legal concern was that non-source-specific compliance measures "would be inconsistent with the EPA's interpretation of the" best system of emission reduction as itself plant-specific. ACE Rule, 84 Fed. Reg. at 32,555–32,556. In that way, the EPA extended to States' compliance measures the same incorrect textual interpretation of the Clean Air Act that underlay its determination of what best systems may include—namely, that the system must be one that can be applied to and at the individual source. The EPA reasoned that "implementation and enforcement of such standards should correspond with the approach used to set the standard in the first place." *Id.* at 32,556.

The Agency's practical concern was that compliance measures that are not source-specific could result in "asymmetrical regulation[.]" meaning the stringency of standards could vary across sources. ACE Rule, 84 Fed. Reg. at 32,556. It argues here that such regulation "could have significant localized adverse consequences" in the case of many pollutants regulated under Section 7411(d). EPA Br. 240.

Because we hold that the EPA erred in concluding Section 7411 unambiguously requires that the best system of emission reduction be source specific, we necessarily reject the ACE Rule's exclusion from Section 7411(d) of compliance measures it characterizes as non-source-specific. The Agency tied that exclusion to its flawed interpretation of the statute as unambiguously confined to measures taken "at" individual plants, so it falls with that decision. ACE Rule, 84 Fed. Reg. at 32,555–32,556.

The statute says nothing about the measures that sources may use to comply with the standards States establish under Section 7411(d), and the EPA cites no separate authority that would require compliance measures to be source-specific, or that Congress meant to so hogtie the States in devising standards of performance. Regardless of any policy-based reasons the EPA offers for limiting compliance measures, then, its decision to exclude averaging and trading and biomass co-firing is foreclosed by its legally erroneous starting point.

Neither can the EPA's policy-based reasons sustain its decision to exclude its disfavored non-source-specific compliance measures in the context of carbon dioxide emissions. Apart from its statutory interpretation, the EPA's only ground for excluding those compliance measures is the Agency's stated concern to avoid asymmetrical regulation.

ACE Rule, 84 Fed. Reg. at 32,556. It argues that asymmetrical regulation “could have significant localized adverse consequences for public health and the environment.” EPA Br. 240. The Agency points to the case of fluoride—another pollutant regulated under Section 7411(d)—to note that allowing sources to meet state standards of performance by averaging emissions across units or between facilities “could cause serious environmental impacts on local communities where pollution was under-controlled, causing localized damage.” *Id.* In light of such considerations, the EPA worried that a system of averaging and trading “would undermine the EPA’s determination” of the best system of emission reduction, leading to the sort of localized consequences the system is designed to guard against. ACE Rule, 84 Fed. Reg. at 32,557.

But that point does not support the EPA’s categorical rule, let alone prove that the statute unambiguously compels the Agency’s reading. Unlike pollutants such as fluoride, carbon dioxide emissions do not pose localized concerns at the site of emission. Whereas the EPA might determine that the best system for reducing fluoride emissions is one that can be applied to and at the source, and it would be reasonable for the EPA in turn to limit compliance measures to correspond with such a “best system,” the same cannot be said of carbon dioxide. Indeed, the EPA recognizes that “CO₂ is a global pollutant with global effects[,]” meaning “there may be few direct and area public health consequences from asymmetrical regulation of carbon dioxide within a State.” EPA Br. 239.

The Agency defends its concern about asymmetrical regulation in the context of carbon dioxide emissions with the unsupported contention that an interpretation of Section 7411(d) that allowed non-source-specific compliance measures “would not be limited to carbon dioxide alone.” EPA Br. 240. But there is no reason to conclude, and petitioners do not argue,

that the statute requires the EPA to permit non-source-specific compliance measures for every pollutant it regulates under Section 7411. The statute is not so rigid as EPA supposes. In fact, Section 7411 itself does not textually restrict the States' choice of compliance measures for their sources at all. *See also* Power Cos. Pet'rs Br. 25–26; Biogenic Pet'r Br. 16–17. Even if the EPA might reasonably limit compliance measures in specific situations based on its determination of the best system for reducing particular types of emissions with localized consequences, the statute imposes no requirement that such limitations be uniform across the regulation of different pollutants.

In sum, the EPA's conclusion on compliance by sources rises and falls with its legally flawed interpretation of the statute. The Agency's practical concern about asymmetrical regulation could not, in any event, support the exclusion of biomass co-firing or averaging and trading in the particular context of carbon dioxide emission regulation.

B. THE MAJOR QUESTIONS DOCTRINE

The EPA also references the so-called “major questions” doctrine in defense of its statutory interpretation and the ACE Rule. 84 Fed. Reg. at 32,529. But that doctrine does not confine the EPA to adopting solely emission standards that can be implemented physically to and at the individual plant.

The Supreme Court has said in a few cases that sometimes an agency's exercise of regulatory authority can be of such “extraordinary” significance that a court should hesitate before concluding that Congress intended to house such sweeping authority in an ambiguous statutory provision. *See King v. Burwell*, 576 U.S. 473, 485–486 (2015); *Gonzales v. Oregon*, 546 U.S. 243, 262, 266–267 (2006); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000); *accord*

Utility Air Regulatory Group v. EPA (UARG), 573 U.S. 302, 324 (2014); *see also MCI Telecommc'ns v. AT&T*, 512 U.S. 218, 231 (1994). Where there are special reasons for doubt, the doctrine asks whether it is implausible in light of the statute and subject matter in question that Congress authorized such unusual agency action. *See, e.g., UARG*, 573 U.S. at 324 (considering whether the challenged rule would “bring about an enormous and transformative expansion in EPA’s regulatory authority without clear congressional authorization”); *Brown & Williamson*, 529 U.S. at 161 (holding that the FDA could not regulate tobacco because it was “plain that Congress ha[d] not given the FDA the authority that it s[ought] to exercise”).

In the ACE Rule, the EPA stated that, while its interpretation of Section 7411 did not depend on the “major question[s] doctrine[,]” the Agency believed that “that doctrine should apply here[.]” 84 Fed. Reg. at 32,529. The Agency reasoned that the Clean Power Plan would have had “billions of dollars of impact on regulated parties and the economy,” would have “affected every electricity customer[,]” was “subject to litigation involving almost every State,” and would have upset the balance of regulatory authority between federal agencies and the States. *Id.* For those reasons, the Agency concluded that the “interpretive question raised”—whether the “best system of emission reduction” can include measures other than improvements to and at the physical source—“must be supported by a clear[] statement from Congress.” *Id.* That was incorrect.

1. The EPA’s Regulatory Mandate

Unlike cases that have triggered the major questions doctrine, each critical element of the Agency’s regulatory

authority on this very subject has long been recognized by Congress and judicial precedent.

Most importantly, there is no question that the regulation of greenhouse gas emissions by power plants across the Nation falls squarely within the EPA's wheelhouse. The Supreme Court has ruled specifically that greenhouse gases are "air pollutants" covered by the Clean Air Act. *Massachusetts v. EPA*, 549 U.S. at 532. More to the point, the Court has told the EPA directly that it is the Agency's job to regulate power plants' emissions of greenhouse gases under Section 7411. "Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants" through a "§ 7411 rulemaking[.]" *AEP*, 564 U.S. at 426–427. The separate opinion agrees. *See* Separate Op. at 14 ("Does the Clean Air Act direct the EPA to make our air cleaner? Clearly yes. Does it require at least some carbon reduction? According to *Massachusetts v. EPA*, again yes.").

On top of that, the issuance of regulations addressing greenhouse gas pollution is mandatory under the statute because of longstanding endangerment findings. In *Massachusetts v. EPA*, the Supreme Court directed the EPA either to make an endangerment finding under the statute for greenhouse gas pollution, or to explain why it would not do so. 549 U.S. at 532–535. The EPA complied. For now more than a decade—from 2009 to the present day in the ACE Rule itself—the EPA has consistently and repeatedly recognized the serious danger that greenhouse gas pollution poses to human health and welfare. *See* ACE Rule, 84 Fed. Reg. at 32,533; New Source Rule, 80 Fed. Reg. at 64,530–64,531; 2009 Endangerment Finding, 74 Fed. Reg. at 66,496–66,497. By statute, that finding triggers a *mandatory* duty on the EPA to regulate greenhouse gas pollution. 42 U.S.C. § 7521(a)(1) (motor vehicle emissions); 42 U.S.C. § 7411(b) (stationary

sources that contribute significantly to such dangerous pollution).⁸

So the EPA has not just the authority, but a statutory duty, to regulate greenhouse gas pollution, including specifically from power plants.

In that way, the pollution measures in the Clean Power Plan do not fit the major-question mold of prior cases. For example, in *Brown & Williamson*, the major question was whether the agency had authority to regulate tobacco at all. There, the Supreme Court ruled that there was “reason to hesitate” before concluding that the provisions of the Food, Drug, and Cosmetic Act covering restricted devices, *Brown & Williamson*, 529 U.S. at 134 (citing 21 U.S.C. § 360j(e)), gave the Food and Drug Administration the authority to regulate

⁸ As discussed below with respect to the challenge brought by the Coal Petitioners (*infra* at III.A.1), the legal basis for the EPA’s regulation of greenhouse gas emissions from existing power plants in both the Clean Power Plan and the ACE Rule was the Agency’s prior 2015 decision to issue standards of performance for carbon dioxide emitted from new power plants. That decision, in turn, was based on the Agency’s recognition (since the 1970s) that fossil-fuel-fired power plants contribute significantly to air pollution, which “may reasonably be anticipated to endanger the public health or welfare.” 42 U.S.C. § 7411(b)(1)(A); *see* Air Pollution Prevention and Control: List of Categories of Stationary Sources, 36 Fed. Reg. 5931, 5931 (March 31, 1971); Air Pollution Prevention and Control: Addition to the List of Categories of Stationary Sources, 42 Fed. Reg. 53,657, 53,657 (Oct. 3, 1977). The EPA also determined in 2015 that power plants contribute significantly to greenhouse gas pollution in particular. *See* New Source Rule, 80 Fed. Reg. at 64,531. That determination, combined with the determination that greenhouse gases are dangerous to public health and welfare, triggers a mandatory duty to regulate under Section 7411(b)(1)(A).

tobacco given its “unique political history” and its role as a “significant portion of the American economy.” *Id.* at 159. The Court reasoned based on the overall drug-regulatory scheme, as well as Congress having “created a distinct regulatory scheme for tobacco products,” that Congress “could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion.” *Id.* at 159–160.

That question of agency authority to regulate the matter in question was absent for the Clean Power Plan. In fact, the Supreme Court in *Massachusetts v. EPA* rejected the analogy between regulation of greenhouse gases as a pollutant under the Clean Air Act and regulation of tobacco as a drug under the Food, Drug, and Cosmetic Act. 549 U.S. at 530–531. Treating tobacco as a drug would have been wholly novel, requiring the agency to ban virtually all tobacco products—a result the Court suspected Congress did not intend. *Id.* at 531; *Brown & Williamson*, 529 U.S. at 143. By contrast, the Supreme Court explained, greenhouse gases are air pollutants that fall squarely within the Clean Air Act’s coverage, and the Act would subject such pollutants, if the agency makes the necessary findings, only to regulation, not prohibition. *Massachusetts v. EPA*, 549 U.S. at 531.

The Clean Air Act also contains its own limits on regulation, like mandating that the EPA take into account such factors as available technology and the cost of compliance. *Id.* (citing 42 U.S.C. § 7521(a)(2)); *see also* 42 U.S.C. § 7411(a)(1) (requiring consideration of health and environmental impacts, energy requirements, and cost). In that way, Congress designed the Clean Air Act’s processes for regulating air pollution to adapt to “changing circumstances and scientific developments” without imposing unreasonable technological or financial burdens on industry. *Massachusetts*

v. *EPA*, 549 U.S. at 532. So, unlike the major question of tobacco regulation in *Brown & Williamson*, there is “nothing counterintuitive” about the EPA’s reasonable regulation of dangerous airborne substances like greenhouse gases. *Id.* at 531–532.

Similarly, the major question in *UARG* was whom the EPA was attempting to regulate. In that case, the Supreme Court held that the EPA’s statutory permitting authority for the construction and modification of stationary sources was “designed to apply to, and cannot rationally be extended beyond, a relative handful of large sources capable of shouldering heavy substantive and procedural burdens”—sources like power plants. 573 U.S. at 322. The Court held that, without clear statutory grounding, the EPA’s effort to extend permitting requirements to literally millions of small sources of greenhouse gas pollution but of no other regulated pollutants—sources like schools, hospitals, churches, and shopping malls—overshot its statutory authority. *Id.* at 324, 328.

The Clean Power Plan, by contrast, regulated the very entities the EPA was told by the Supreme Court in *AEP* and *UARG* to regulate—fossil-fuel-fired power plants. And it employed statutory tools that were “suitable” for application to the long-regulated power industry. See *UARG*, 573 U.S. at 323, 324 n.7. *American Electric Power* pointed the Agency to regulation under Section 7411 specifically, explaining that “Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from [new, modified, and existing] powerplants” using the regulatory tools laid out in Section 7411. 564 U.S. at 424–426.

That is no doubt a significant task for the EPA. But that is not because of any agency overreach. It is the product of

Congress' charge that the EPA regulate air pollution nationwide. And with respect to regulating greenhouse gas pollution in particular, it reflects the fact that fossil-fuel-fired power plants predominate the power industry and are spread across the Nation. See United States Energy Information Administration (EIA), *Frequently Asked Questions: What is U.S. Electricity Generation by Source?* (Nov. 2, 2020), <https://www.eia.gov/tools/faqs/faq.php?id=427&t=2> (last visited Jan. 11, 2021); EIA, *U.S. Energy Mapping System*, <https://www.eia.gov/state/maps.php> (last visited Jan. 11, 2021). So much so that they "are by far" the greatest stationary contributor to greenhouse gas pollution and the significant dangers it causes for the public health and welfare. New Source Rule, 80 Fed. Reg. at 64,522.

2. Best System of Emission Reduction

So *what* the EPA may regulate (greenhouse gas pollution), and *whom* it may target (power plants), and *how* (under Section 7411) have all been resolved and so do not trigger the major questions doctrine.

That leaves the EPA no place to house its major-question objection other than in the interpretation of the statutory term "best system of emission reduction," 42 U.S.C. § 7411(a)(1). More specifically, the EPA says the use of any emission-control measures that do not operate at the individual physical plant level requires an express statement from Congress, and that federal standards that might encourage generation-shifting are therefore categorically forbidden under Section 7411.

But the major questions doctrine does not apply there either for a number of reasons.